

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 1.00: RULES AND REGULATIONS OF THE DIVISION OF LABOR RELATIONS

Section

- 1.01: Adjudicatory Proceedings
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- 1.04: Interest Mediation, Fact-finding, and Interest Arbitration
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- 1.08: Rules and Regulations for Matters Filed After November 14, 2007 with the Division of Labor Relations

1.01: Adjudicatory Proceedings

Rules and regulations governing adjudicatory proceedings may be found as follows:

- (1) Rules and regulations relating to the administration of M.G.L. c. 150E, *Labor Relations: Public Employees*, 456 CMR 11.00 through 13.00, 456 CMR 14.08 and 14.09, 456 CMR 15.05 through 15.12, and 456 CMR 17.11 through 17.13.
- (2) Rules and regulations relating to the administration of M.G.L. c. 150A, An Act providing for Collective Bargaining for Private and Other Employees, 456 CMR 2.00.

1.02: Public Employees

Rules and regulations relating to the administration of M.G.L. c. 150E, An Act providing for Collective Bargaining for Public Employees, may be found commencing at 456 CMR 10.00.

1.03: Private Employees

Rules and regulations relating to the administration of M.G.L. c. 150A, An Act providing for Collective Bargaining for Private and Other Employees, may be found commencing at 456 CMR 2.00.

1.04: Interest Mediation, Fact-finding, and Interest Arbitration

Rules and regulations relating to interest mediation, fact-finding, and interest arbitration in disputes involving public employers and public employees, pursuant to M.G.L. c. 150E, as well as interest mediation in the private sector, may be found commencing at 456 CMR 18.00.

1.05: Grievance Mediation and Arbitration

Rules and regulations relating to mediation and arbitration of grievances between parties, whenever in their collective bargaining agreement(s) or by submission they have provided for mediation and/or arbitration through the Division of Labor Relations, may be found commencing at 456 CMR 19.00.

1.06: Grievance Arbitration

Rules and regulations relating to the procedures for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Division of Labor Relations as the arbitration tribunal may be found commencing at 456 CMR 20.00.

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1.07: Rules and Regulations for Matters Filed with the Former Labor Relations Commission and/or Board of Conciliation and Arbitration on or Before November 14, 2007

All cases, charges, and petitions filed on or before November 14, 2007 @ 5:00 P.M. shall be governed by the regulations in effect -- 456 CMR 1.00, *et seq.* and 457 CMR 1.00, *et seq.* -- prior to such date and time.

1.08: Rules and Regulations for Cases Filed After November 14, 2007 with the Division of Labor Relations

All cases, charges, and petitions filed after 5:00 P.M. on November 14, 2007 shall be governed by the instant Emergency Regulations until the promulgation and adoption of new regulations in accordance with applicable law.

REGULATORY AUTHORITY

456 CMR 1.00: M.G.L. c. 23, § 9T(c).

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456 CMR 2.00: ADMINISTRATION OF THE LABOR RELATIONS LAW: M.G.L. c. 150A

Section

- 2.01: Definitions
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- 2.03: Conduct of Hearings
- 2.04: Questions of Representation
- 2.05: Prohibited Practices
- 2.06: Time Limit for Filing Charges
- 2.07: Designation of Agents of the Commission
- 2.08: Construction of Rules and Amendments

2.01: Definitions

Days shall mean calendar days, including Saturdays, Sundays and legal holidays.

Hearing Officers shall mean the Commission member or agent designated to preside at a hearing.

Law. The term Law shall mean the State Labor Relations Law (M.G.L. c. 150A). The terms person, employer, employee, representatives, labor organizations, unfair labor practice, and Commission, shall have the meanings set forth in M.G.L. c. 150A, § 2.

Party as used in connection with the proceedings under M.G.L. c. 150A, § 6, shall mean the respondent to the charge, the charging party and any other persons, labor organizations, or entities whose intervention in the proceedings has been permitted by the Commission. The term party as used in connection with proceedings under M.G.L. c. 150A, § 5, shall mean the employer, or employers, the person or organization designated in the notice of hearing and served therewith, the petitioner and any other person, labor organization, or entity whose intervention has been permitted by the Commission, except as limited by the Commission in granting such permission.

Showing of Interest shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of authorization cards or petitions, signed and dated by employees, authorizing the named employee organization to represent such employees for the purpose of collective bargaining; current dues deductions; or evidence approved by the Commission.

Written Majority Authorization as used in 456 CMR 2.00, shall have the meaning set forth in M.G.L. c. 150A, § 2.

2.02: General Provisions

The provisions of 456 CMR 12.00 are applicable to all proceedings under 456 CMR 2.00.

2.03: Conduct of Hearings

The provisions of 456 CMR 13.00 are applicable to all proceedings under 456 CMR 2.00, except that any party seeking review of a decision of a hearing officer may file an original and four copies of a supplementary statement pursuant to 456 CMR 13.15(4).

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2.04: Questions of Representation

The provisions of 456 CMR 14.00, except 456 CMR 14.06(1), and 456 CMR 14.07, are applicable to all proceedings under M.G.L. c. 150A, §§ 5 and 5A except that all references to M.G.L. c. 150E, § 4 in 456 CMR 14.00 shall be considered references to M.G.L. c. 150A, §§ 5 or 5A. Moreover, except for good cause shown, no petition filed under the provisions of M.G.L. c. 150A, §§ 5 or 5A, and no petition filed pursuant to 456 CMR 14.15 seeking to alter the composition or scope of a unit during the term of an existing valid collective bargaining agreement, shall be entertained unless such petition is filed no more than 90 days and no fewer than 60 days prior to the termination date of said agreement. A petition to alter the composition or scope of an existing unit by adding or deleting job classifications which have been created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times. No collective bargaining agreement shall operate as a bar for a period of more than three years.

2.05: Prohibited Practices

The provisions of 456 CMR 15.00 (except 15.03), 456 CMR 16.06 and 456 CMR 16.08 are applicable to all proceedings under M.G.L. c. 150A, § 6 except that all references to M.G.L. c. 150E, § 10 shall be considered references to M.G.L. c. 150A, §§ 4, 4A, 4B, and 4C, and all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.06: Time Limit for Filing Charges

(1) 15 Day Limit - M.G.L. c. 150A, § 6A Charges. Any employee required to maintain union membership as a condition of employment who files a charge pursuant to M.G.L. c. 150A, § 6A, must file such charge not more than 15 days after notice that the union has requested the employee's discharge or other adverse action for failure to maintain union membership.

(2) Six Month Limit - All Other Charges. Except for good cause shown, no charge alleging a violation of other provisions of M.G.L. c. 150A shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of the charges with the Commission.

2.07: Designation of Agents of the Commission

The provisions of 456 CMR 18.00 are applicable to all proceedings under 456 CMR 2.00, except that all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.08: Construction of Rules and Amendments

456 CMR 2.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150A. The provisions of 456 CMR 11.10, 456 CMR 14.19, 456 CMR 14.20, and 456 CMR 14.21, except 14.19(1)(g), 14.19(11), and 14.19(12)(b), are applicable to all proceedings under M.G.L. c. 150A, § 5, except that all references to M.G.L. c. 150E, § 1 shall be considered references to M.G.L. c. 150A, § 2, all references to M.G.L. c. 150E, §§ 3 and 4 shall be considered references to M.G.L. c. 150A, § 5, and all references to employee organization shall be considered references to labor organization as defined in M.G.L. c. 150A, § 2.

REGULATORY AUTHORITY

456 CMR 2.00: M.G.L. c. 23, § 9R; c. 150A, §§ 4A, 4B, 5 and 6.

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456 CMR 10.00: ADMINISTRATION OF M.G.L. C. 150E, AN ACT PROVIDING FOR
COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Section

10.01: Applicability of Rules

10.01: Applicability of Rules

All proceedings before the Division of Labor Relations arising under M.G.L. c. 150E shall
be conducted in accordance with 456 CMR 10.00 through 23.00.

REGULATORY AUTHORITY

456 CMR 10.00: M.G.L. c. 23, § 9T(c).

NON-TEXT PAGE

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456 CMR 11.00: DEFINITIONS

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- 11.05: Showing of Interest
- 11.06: Days
- 11.07: Hearing Officer
- 11.08: Complaint Charge
- 11.09: Written Majority Authorization

11.01: Law

The term Law as used in 456 CMR 11.00, 12.00, 13.00, 14.00, 15.00, 16.00 or 17.00 shall mean M.G.L. c. 150E.

11.02: Terms Defined by Law

The terms cost items, employee or public employee, employee organization, employer, incremental cost items, legislative body, professional employee, written majority authorization, and strike shall have the meaning as set forth in M.G.L. c. 150E, § 1. The term board shall refer to the commonwealth employment relations board as set forth in M.G.L. c. 23, § 9R(a). The term division shall refer to the division of labor relations as set forth in M.G.L. c. 23, § 9O. The term appropriate bargaining unit shall mean a bargaining unit determined by the criteria set forth in M.G.L. c. 150E, § 3. The term prohibited practice shall have the meaning specified in M.G.L. c. 150E, § 10.

11.03: Party

The term party shall mean any individual, employer or employee organization participating in a matter before the Commission either as a matter of right or as an intervenor under the provisions of 456 CMR 12.03.

11.04: Recognition

The term recognition shall mean written recognition by an employer pursuant to 456 CMR 14.06(5) of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

11.05: Showing of Interest

The term showing of interest shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of:

- (1) authorization cards or petitions, authorizing the named employee organization to represent such employees for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.03.
- (2) authorization cards or petitions, stating that such employees no longer wish to be represented by the named employee organization for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.04; or
- (3) other evidence approved by the Commission.

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11.06: Days

The term days shall mean calendar days, including Saturdays, Sundays and legal holidays.

11.07: Hearing Officer

The term hearing officer shall mean the Commission member or agent designated to preside at a hearing.

11.08: Complaint Charge

The term complaint as used in the first sentence only of M.G.L. c. 150E, § 11 shall hereinafter be referred to as a charge.

11.09: Written Majority Authorization

In addition to the meaning as set forth in M.G.L. c. 150E, § 1, the term written majority authorization shall mean a majority of employees in a petitioned-for, appropriate bargaining unit who have designated an employee organization as their exclusive representative. Such designations shall consist of:

(1) Authorization cards, petitions, or other written evidence that the Division finds suitable that demonstrates that the majority of employees in an appropriate bargaining unit wish to be represented by an employee organization for the purposes of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within 12 months of the filing of a petition for certification by written majority authorization pursuant to 456 CMR 14.19.

(2) Any evidence submitted as written majority authorization shall:

- (a) contain a legible employee signature;
- (b) be dated by the employee;
- (c) be an original document rather than a photocopy or some other replication;
- (d) contain a certification from the employee that the designation is his or her free act and deed and given without consideration;
- (e) include the name of the employee organization seeking majority status;
- (f) include a statement in which the employee designates the aforementioned employee organization as its representative for the purposes of collective bargaining; and
- (g) other evidence approved by the Division.

(3) The written majority authorization shall be valid only if signed within 12 months preceding the date on which the written majority authorization are proffered to the Division or an outside neutral to establish proof of majority and exclusive representative status.

(4) The Division, any outside neutral, and any petitioning employee organization shall maintain the confidentiality of the written majority authorizations. The written majority authorizations shall not be furnished to any of the parties.

REGULATORY AUTHORITY

456 CMR 11.00: M.G.L. c. 23, § 9R; c. 150E, § 3.

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456 CMR 12.00: GENERAL PROVISIONS

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- 12.01: Scope
- 12.02: Service: When Required
- 12.03: Intervention
- 12.04: Appearances
- 12.05: Right to Counsel
- 12.06: Postponements
- 12.07: Time: How Computed
- 12.08: Contemptuous Conduct
- 12.09: Other Conferences
- 12.10: Settlement of Cases
- 12.11: Filing with the Division

12.01: Scope

456 CMR 12.00 is applicable to all proceedings before the Division, except for those proceedings held pursuant to 456 CMR 18.00, 19.00, and 20.00.

12.02: Service: When Required

Except as otherwise provided in 456 CMR, all petitions and charges, every pleading subsequent to the original petition or charge, every written motion, every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, request for reconsideration, notice of appeal, supplementary statement and similar paper filed with the Division of Labor Relations shall be signed by the party or a representative of the party on whose behalf such paper is filed and shall be served upon each of the parties or their legal representative, if any. A certificate of service or other indication of service shall accompany such filing. Service upon each of the parties, or their legal representative, if any, shall be made at the same time as such document is filed with the Division of Labor Relations.

12.03: Intervention

Any employer, employee or employee organization desiring to intervene in any proceeding shall file with the Division of Labor Relations a motion in writing, or may move orally at the hearing, on the record, stating the grounds upon which such employee, employer or employee organization claims to be interested. Such written motion must be filed at or prior to the first day of hearing in any proceeding, except for good cause shown. The Division of Labor Relations shall rule upon all such motions but may defer ruling until the conclusion of the hearing. The Division may permit intervention to such extent and upon such terms as it shall deem just.

12.04: Appearances.

- (1) Every representative or attorney representing a party shall enter an appearance with the Division. Every party shall designate one representative or attorney for the purpose of receiving notice, pleadings or service of process.
- (2) An appearance may be withdrawn only with the permission of the Division. A request to the Division to withdraw an appearance shall be made in writing, served upon both the party on whose behalf the representative or attorney has appeared and upon representatives of all other parties to the proceeding.
- (3) The filing of an appearance shall not operate as a waiver to any challenge to the Division's jurisdiction.

12.05: Right to Counsel

Any party to a proceeding shall have the right to appear at any conference, investigation or hearing, by counsel or by other representative.

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12.06: Postponements

Requests for postponements of hearings, investigations or conferences scheduled by the Division will not be granted unless good and sufficient cause is shown and the following requirements are met:

- (1) The request must be in writing directed to the Director or the hearing officer assigned to the proceeding.
- (2) The grounds for the request must be set forth in detail.
- (3) The requesting party must specify alternate dates for rescheduling the hearing or conference.
- (4) The position of all parties concerning both the postponement request and the proposed alternate dates must be ascertained in advance by the requesting party and set forth in the request.
- (5) Copies of the request must be served contemporaneously on all parties and that fact must be noted on the request.
- (6) The request must be signed by the person making it.
- (7) For the purpose of 456 CMR 12.06, "good and sufficient cause" may include a showing to the satisfaction of the Division or its agents that a postponement will result in settlement of the case.
- (8) Except for good cause shown, no request for postponement will be granted on any of the three days immediately preceding the date of hearing, investigation or conference.

12.07: Time: How Computed

- (1) In computing any period of time prescribed or allowed by 456 CMR 12.00, the day of the act, event or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.
- (2) Whenever a party has the right or is required to do some act within a prescribed period of time, if the Division serves notice of such right or requirement by mail, the Division shall presume that the party received notice thereof three days from the date of issuance of such notice. The presumption may be rebutted by evidence of later receipt.

12.08: Contemptuous Conduct

- (1) Contemptuous conduct by any person at any hearing, conference or other proceeding before the Division, a member or duly designated agent shall be grounds for exclusion from any hearing, conference or other proceeding held under 456 CMR 12.00. The refusal of a witness at a hearing to answer any question which has been ruled by the Division, member or duly designated agent to be proper shall, in the discretion of the Division, member or duly designated agent, be grounds for striking all testimony previously given by such witness on related matters.
- (2) Contemptuous conduct by an attorney or representative appearing before the Division or its designated agent may be grounds for immediate exclusion from the hearing, conference or other proceeding at which he or she is appearing, or may be grounds for suspension or debarment from practice before the Division. Suspension or debarment determination, and the length thereof, shall be made by the Division after due notice and a hearing, if requested in writing.

12.09: Other Conferences

Nothing under 456 CMR 12.00 shall be construed so as to prohibit or limit the Division or any member or agent thereof from holding a conference or investigation at any time in connection with any matter pending before the Division.

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12.10: Settlement of Cases

The Division or its agents may suggest settlement ideas to the parties at any time and may require the parties to participate in settlement conferences.

12.11: Filing with the Division

(1) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Division shall be on paper measuring 8½ inches in width and 11 inches in length.

(2) All pleadings, written motions, briefs and memoranda shall be typewritten and double spaced.

(3) An original and two copies of all pleadings, written motions, briefs or memoranda shall be filed with the Division.

(4) All documents, including those permitted to be filed by facsimile transmission, shall be deemed filed upon receipt by the Division. Any documents, including those permitted to be filed by facsimile transmission, received after 5:00 P.M. shall be deemed to be filed on the following business day.

(5) The Division will permit the following documents to be filed by facsimile transmission:

- (a) Requests for extensions of time for filing documents;
- (b) Requests for continuances;
- (c) Consent election agreements;
- (d) Settlement agreements;
- (e) Withdrawal notices.

Except for those documents listed in 456 CMR 12.11(5)(a) through (e), the Division will not accept any document requiring an original signature by facsimile. Those include, but are not limited to: prohibited labor practice charges, written investigation submissions, representation petitions, showings of interest, answers, requests for reconsideration, requests for review, notices of appeal, objections to elections, challenges to recommended findings of fact, requests for advisory opinions, strike investigation petitions, requests for binding arbitration, filings pursuant to M.G.L. c.150E, §§ 13 and 14, motions, briefs, and supplementary statements.

REGULATORY AUTHORITY

456 CMR 12.00: M.G.L. c. 23, § 9T(c).

NON-TEXT PAGE

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456 CMR 13.00: CONDUCT OF HEARINGS

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- 13.14: Reopening of Hearings
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13.01: Scope

- (1) The provisions of the former 456 CMR 13.00 are applicable to all hearings before the Division for cases filed with the former Labor Relations Commission prior to 5:00 P.M. on November 14, 2007, except as set forth in 456 CMR 13.01(3).
- (2) The provisions of 456 CMR 13.00 are applicable to all hearings before the Division for cases filed after 5:00 P.M. on November 14, 2007, except as set forth in 456 CMR 13.01(3) and except for those proceedings held pursuant to 456 CMR 18.00, 19.00, and 20.00.
- (3) Hearings on petitions filed pursuant to 456 CMR 14.00 shall be governed by the procedures in 456 CMR 14.08

13.02: Hearings and Recommended Findings

- (1) (a) If a hearing is ordered, the Division shall set the time and place for the hearing, which time and place may be changed by the Division at the request of one of the parties for cause shown.
- (b) Any party may file a motion to dismiss the complaint or for a summary decision prior to a hearing.
- (c) At the hearing, which shall be presided over by a hearing officer, unless, pursuant to M.G.L. c. 150E, § 11(f), the Board orders that the hearing shall be conducted by the Board itself, the employer, the employee organization, or the person so complained of shall have the right to appear in person or otherwise to defend against the complaint.
- (d) At the discretion of the Division, any person may be allowed to intervene in such proceeding.
- (e) In any hearing, the Division shall not be bound by the technical rules of evidence prevailing in the courts.
- (f) The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.
- (g) At the conclusion of the hearing, the hearing officer shall issue written findings of fact and shall determine whether a practice prohibited under 456 CMR 13.10 has been committed and, if so, shall issue an order requiring the charged party to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of 456 CMR 13.02, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice.
- (h) The hearing officer shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of 456 CMR 13.10.
- (i) If the hearing officer determines that a practice prohibited under 456 CMR 13.10 has not been or is not being committed, the hearing officer shall state his/her findings of fact and issue an order dismissing the complaint.

13.02: continued

(j) Any order issued pursuant to 456 CMR 13.02(1)(j) shall become final and binding unless, within ten days after notice thereof, any party requests a review by the board. A review may be made upon the record, which shall consist of the pleadings, motions, rulings, and the testimony taken at the hearing, if any, or upon such portions of the record as the parties may designate.

(k) Upon any complaint made under 456 CMR 13.02 and a petition filed by one or more parties to the proceeding, the board, in its discretion, and for good cause shown, may order that the hearing be conducted by the board itself. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the board, any person may be allowed to intervene in such proceeding. In any hearing, the board shall not be bound by the technical rules of evidence prevailing in the courts. The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.

(2) A hearing that has been presided over by a hearing officer shall be decided in a written decision based on the record of the proceedings. The hearing officer who has observed the witnesses shall issue written recommended findings of facts and/or recommended conclusions of law prior to the Board's consideration of the case on appeal. Within ten days after notice thereof, or within 15 days of receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made after receipt of a hearing officer's recommended factual findings and/or conclusions of law, whichever is later, any party may submit to the Division an original and four copies of a written challenge of the hearing officer's recommended findings of fact and/or conclusions of law. Challenges to a hearing officer's recommended factual findings must identify the specific recommended findings alleged to be erroneous and must clearly identify all record evidence that supports a contrary factual finding. Challenges to a hearing officer's recommended conclusions of law must identify the specific recommended conclusions challenged and must explain the basis for the challenging party's challenge. Within ten days of receipt of the challenging party's challenge, any other party to the proceeding may submit an original and four copies of a written response to the challenge. The record of the proceedings will include the hearing officer's recommended factual findings and/or conclusions of law along with any written challenges and responses submitted to the Division. The authority exercised by the hearing officer shall be as set forth in 456 CMR 13.06.

(3) A hearing that has been designated for a hearing officer decision in the first instance shall be presided over by a hearing officer who shall have, in addition to the authority set forth in 456 CMR 13.06, the authority to make all rulings and orders necessary to decide the case based on the record of the proceedings. Final decisions and orders of the hearing officer shall be in writing and may be appealed to the Board in accordance with 456 CMR 13.15.

13.03: Interlocutory Appeals

(1) Prior to the close of a hearing, a party may seek relief from a ruling or order of the hearing officer in the following manner:

- (a) the motion for relief must be in writing and addressed to the Commonwealth Employment Relations Board (CERB);
- (b) the motion must set forth with specificity the ruling or order from which relief is sought and grounds on which the party believes that it is entitled to relief, including why review following the close of the hearing is not an adequate remedy.

(2) Such a motion for review shall not operate to delay or interrupt the hearing. The ruling of the hearing officer shall remain in effect until and unless modified or overruled by the Board. The Board may, at its discretion, defer any ruling on such motion until the close of the hearing.

13.04: Right to Counsel and to Offer Evidence

Any party to a proceeding shall have the right to appear at such proceeding in person, by counsel or by other representative, to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.

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13.05: Open to Public

Any hearing conducted pursuant to 456 CMR 13.00 shall be open to the public except in extraordinary situations or circumstances as the Division, in its discretion, may determine.

13.06: Authority of Division Agent Presiding at Hearing

The hearing officer presiding at a hearing shall have the right to inquire fully into the facts relevant to the subject matter of the hearing and shall not be bound by the rules of evidence observed by courts. The hearing officer shall have the authority:

- (1) to administer oaths and affirmations;
- (2) to issue subpoenas;
- (3) to rule upon motions to revoke or modify subpoenas;
- (4) to rule upon offers of proof and receive relevant evidence;
- (5) to permit depositions to be taken when appropriate;
- (6) to limit the examination and cross-examination of each witness to one representative for each party;
- (7) to hold conferences for the settlement or clarification of the issues;
- (8) to dispose of procedural requests or similar matters;
- (9) to require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing whenever possible and to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
- (10) to request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof or to request the parties to submit proposed findings of fact, conclusions of law and/or requests for remedial relief;
- (11) to continue the hearing from day to day or to adjourn the hearing to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;
- (12) to rule on the admissibility of evidence; and
- (13) to take any other action authorized by 456 CMR 13.00.

13.07: Motions

All motions made prior to or subsequent to the hearing shall be filed in writing with the hearing officer or the Board in accordance with the provisions of 456 CMR 12.11 and shall state the order or relief applied for and the grounds for the motion. Within seven days of service of the motion, any other party to the proceeding may file a response with the hearing officer or the Board, unless directed otherwise by the hearing officer or the Board. The hearing officer or the Board may defer ruling on any motions until the close of the hearing and may direct the parties to proceed with the hearing while the motion is pending. All motions made at the hearing shall be stated orally, unless otherwise directed by the hearing officer or the Board, and shall be included in the record of the hearing.

13.08: Objections

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a short statement of the grounds of such objection, and shall be included in the record of the hearing. No such objection shall be deemed waived by further participation in the proceedings.

13.09: Witnesses

Witnesses shall be examined orally under oath or affirmation, except if they reside outside of the State or because of illness or other cause are unable to testify before the Division. In such situations, the Division or its agent may direct that the testimony be taken within or without this State in such manner and in such form as is permitted by law.

13.10: Stipulations of Fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue.

13.11: Record of Hearing

(1) Except for good cause shown, all hearings conducted pursuant to 456 CMR 13.00 shall be recorded by one of the following methods: audio tape, stenographic transcription, handwritten transcription, or other equivalent method approved by the Division.

(2) Copies of any official audio tape, stenographic transcription, handwritten transcription or other equivalent record prepared by the Division or its agents shall be made available to all parties for purchase and may be made available for the parties to review at the Division's offices.

(3) Any party desiring a copy of the record of the hearing before the Division may submit a written request for same to the Director of the Division.

(4) Any party may request permission of the hearing officer, or if one has not yet been designated, of the Division, to record the hearing by means of audio tape or stenographic transcription, or through other means that will not disrupt the proceedings. Any party may request the Division to designate a written transcript of the proceeding as the official record of the proceeding subject to the following requirements:

- (a) A copy of the written transcript has been made available to all other parties to the proceeding and all have had the opportunity to specify any objections to the accuracy of the transcript to the Division;
- (b) A copy of the written transcript will be made available for purchase to all other parties for a reasonable fee reflective of the cost of the transcript;
- (c) A copy of the written transcript is provided without charge to the Division with the understanding that the Division will make the transcript available to the public pursuant to the provisions of state law.

The Division may refer such a request to the hearing officer for resolution.

13.12: Subpoenas

(1) Any party to a proceeding under 456 CMR 13.00 may request the issuance of a subpoena to compel the attendance of witnesses or the production of books, records, documents or correspondence.

(2) The party requesting a subpoena shall submit a written request to the hearing officer assigned to the proceeding or, if no hearing officer has been assigned, to the Director. The request shall be submitted on a form authorized by the Division and shall include:

- (a) the Division case number and caption of the proceeding;
- (b) the name, address and telephone number of the party requesting the subpoena;
- (c) the date, time and location of the proceeding;
- (d) the name and address of the witness whose testimony is sought; and,
- (e) a specific description of the books, records, correspondence or documents sought.

(3) The hearing officer, the Director, or a CERB member shall be authorized to grant or deny requests for subpoenas and shall be authorized to affix the seal of the Division. A request for issuance of a subpoena shall be denied only if such request fails to comply with 456 CMR 13.12(2) or if the request is overbroad, oppressive or otherwise legally defective.

13.12: continued

(4) The party requesting the subpoena shall be responsible for service of the subpoena and shall assume all costs of service, witness fees and mileage. Subpoenas shall be served in person by a disinterested person or by certified or registered mail. Witnesses shall be paid the same fees for attendance and travel as in civil cases in the courts of the Commonwealth and such fees shall be paid at the time of service.

(5) (a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the hearing officer, or, if no hearing officer has been designated, to the Director. The motion shall include a statement of the grounds for revocation or modification of the subpoena.

(b) Upon receipt of a motion for revocation or modification of a subpoena, the hearing officer or the Director or a member of the CERB shall rule upon the motion. Prior to such ruling, an investigation, pursuant to the provisions of M.G.L. c. 30A § 12(4) shall be conducted.

The Director or Board member may defer ruling on the motion pending designation of a hearing officer.

(6) In the event of failure of a witness to comply with a subpoena, the Division may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Division declines both to quash the subpoena and to initiate proceedings in court nothing in 456 CMR 13.00 will prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court pursuant to M.G.L. c. 30A § 12(5).

13.13: Oral Argument or Briefs

(1) The parties shall be entitled to oral arguments at the close of the hearing or may be given permission by the hearing officer or the Board to file briefs or written statements. The time for oral argument shall be fixed by the Board or hearing officer.

(2) Any party permitted to file a brief shall submit the original and four copies within ten days after the close of the hearing, unless otherwise directed by the hearing officer or Board.

(3) Requests for additional time in which to file a brief shall be made in writing to the hearing officer or to the Board, if the Board is hearing the case in the first instance and shall be filed with the Division no later than three days before the date such briefs are due.

(4) No reply briefs may be filed except by permission either of the hearing officer or of the Board if the Board is hearing the case in the first instance.

13.14: Reopening of Hearings

The Board or hearing officer may reopen the hearing and receive further evidence or otherwise dispose of the matter prior to the issuance of a final decision. The Board or hearing officer shall notify the parties of the time and place of hearings reopened under 456 CMR 13.14.

13.15: Appeal of Hearing Officer Decisions Pursuant to 456 CMR 13.02(3)

(1) The decision of the hearing officer shall become final and binding on the parties unless, within ten days after notice thereof, any party requests a review by the Board. This procedure is the exclusive method by which the parties may request review by the Board of the decision of the hearing officer.

(2) The decision of a hearing officer shall include the findings of fact and conclusions of law upon which the hearing officer based the decision.

(3) Any party seeking review of a decision of a hearing officer must file a notice of appeal with the Division not later than ten days after notice of the decision of the hearing officer. The notice of appeal shall be in writing and contain the case name and number, the date of the decision of the hearing officer and a statement that the party requests review by the Board.

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(4) Within ten days after notice of the hearing officer's decision, or within 15 days after receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made pursuant to 456 CMR 13.15(7), whichever is later, any party appealing to the Board shall file an original and four copies of a supplementary statement. Within ten days of service thereof, any other party to the proceeding may file an original and four copies of a supplementary statement responding to matters raised by the appealing party.

(5) Supplementary statements shall state with specificity the basis of the appeal. A party claiming that the hearing officer has made erroneous findings of fact shall identify the specific findings challenged and clearly identify all record evidence supporting the party's proposed findings of fact. The findings of fact made by the hearing officer may be adopted summarily by the Board unless specifically objected to by a timely filed supplementary statement. Only disputes as to material issues of fact need be resolved by the Board on appeal. When a party claims that the hearing officer has made errors of law, the supplementary statement shall identify the challenged conclusions and must explain the basis upon which the party believes the conclusions to be erroneous. Failure to provide the above-described information may result in summary dismissal of the appeal.

(6) The record on review before the Board shall consist of the hearing officer's decision, the supplementary statements of the parties, if any, such portions of the record before the hearing officer as are necessary to resolve factual disputes and such other evidence as the Board may require.

(7) The parties may request a copy of the taped recording or stenographic transcription of the hearing following the close of the hearing. If the hearing has been recorded by audio tape, a request for a copy of the audio tape shall be made to the Director together with payment. A request for a copy of either the audio tape or stenographic transcription filed more than ten days after notice of the hearing officer's decision will not extend the period for filing a supplementary statement. A request for a copy of the audio tape or stenographic transcription filed within ten days after notice of the hearing officer's decision shall stay the time for filing supplementary statements until 15 days after a copy of the audio tape or stenographic transcription has been made available to the party so requesting.

REGULATORY AUTHORITY

456 CMR 13.00: M.G.L. c. 23, § 9T(c).

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 14.00: QUESTIONS OF REPRESENTATION

Section

- 14.01: Petitions
- 14.02: Petitions by Employers
- 14.03: Petitions by Employee Organizations
- 14.04: Petitions by Employees
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14.01: Petitions

- (1) All petitions filed under 456 CMR 14.00 shall be in the form prescribed by the Commission.
- (2) All petitions filed under 456 CMR 14.00 shall be in writing and shall contain a declaration by the person signing them, under the penalties of perjury, that the contents are true and correct to the best of the signer's knowledge or belief.

14.02: Petitions by Employers

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employer alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit shall contain the following information:
 - (a) The correct name and address of the employer and its designated representative for purposes of collective bargaining.
 - (b) A full description of the bargaining unit involved, specifying the job classifications of the employees of the petitioning employer included therein or excluded therefrom, and the approximate number of employees therein.
 - (c) The name, address and affiliation of the exclusive representative, if any.
 - (d) The date of recognition or certification, if any.
 - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.02(1)(b).
 - (f) The names and addresses of all employee organizations known to have claimed recognition as representatives of a substantial number of employees described in 456 CMR 14.02(1)(b), giving the date of each claim.
 - (g) The names and addresses of other employee organizations known to the employer to have an interest in representing the employees described in 456 CMR 14.02(1)(b).
 - (h) Any other relevant facts which may be required in a petition form issued by the Commission.
- (2) A petition filed by an employer seeking clarification or amendment of an existing bargaining unit shall contain the following information:
 - (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.
 - (b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.
 - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification.

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14.02: continued

- (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.02(2)(b) and (2)(c).
 - (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.
 - (f) The number of employees in the present bargaining unit and in the unit proposed by the clarification.
 - (g) A statement by petitioner setting forth reasons why petitioner seeks clarification of the unit.
 - (h) Any other relevant facts which may be required by the Commission.
- (3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.03: Petitions by Employee Organizations

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employee organization alleging that a substantial number of employees wish to be represented by it shall contain the following information:
- (a) The correct name, address and affiliation of the employee organization.
 - (b) The correct name and address of the employer and the name and address of its representative designated for the purpose of collective bargaining.
 - (c) A full description of the bargaining unit claimed to be appropriate, including job titles, and the approximate number of employees therein.
 - (d) The name and address of all employee organizations known to represent or known to claim to represent any of the employees in the bargaining unit claimed to be appropriate.
 - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.03(1)(c).
 - (f) Any other relevant facts which may be required in a petition form issued by the Commission.
- (2) A petition filed by an employee organization seeking clarification or amendment of an existing bargaining unit shall contain the following information:
- (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.
 - (b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.
 - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification.
 - (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.03(2)(b) and (2)(c).
 - (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.
 - (f) The number of employees in the present bargaining unit and in the unit proposed by the clarification.
 - (g) A statement by petitioner setting forth reasons why petitioner seeks clarification of the unit.
 - (h) Any other relevant facts which may be required by the Commission.
- (3) All petitions filed pursuant to this section must be served on the employer and all incumbent labor organizations or their legal counsel, if any.

14.04: Petitions by Employees

- (1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees in the unit shall contain the following information:

14.04: continued

- (a) The correct name and address of the petitioner.
 - (b) The correct name and address of the employer and the name and address of its collective bargaining representative, if known.
 - (c) A full description of the bargaining unit involved, and the approximate number of employees in the unit.
 - (d) The name, address and affiliation of the recognized or certified representative.
 - (e) The date of recognition or certification.
 - (f) The expiration date of the current collective bargaining agreement covering the employees described in 456 CMR 14.04(1)(c), if any.
 - (g) A concise statement setting forth the facts which cause the petitioner to believe that the exclusive representative no longer represents a majority of the employees in the unit.
 - (h) Any other relevant facts which may be required in a petition form issued by the Commission.
- (2) Individual employees may not file petitions for clarification or amendment of certification.
- (3) All petitions filed pursuant to this section must be served on the employer and all incumbent labor organizations or their legal counsel, if any.

14.05: Showing of Interest

- (1) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees who are not currently represented for purposes of collective bargaining shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least 30% of the employees involved to act in their interest.
- (2) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and no petition filed under 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least fifty percent (50%) of the employees involved to act in their interest.
- (3) No motion to intervene filed under 456 CMR 14.18 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the intervenor has been designated by at least 10% of the employees involved to act in their interest, provided that any incumbent exclusive representative who files a motion to intervene need not comply with the requirements under this section. Authorization cards or other written evidence of a "showing of interest" (as defined in 456 CMR 11.05) must be submitted by the petitioner with the petition or by the intervenor with any motion to intervene to enable the Commission to make this determination. The Commission may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list is requested by the Commission but is not made available, the showing of interest as submitted shall, if otherwise valid, be accepted as bona fide. If the Commission finds that a sufficient showing of interest has not been made, the petitioner or intervenor shall be given notice by the Commission of that finding and shall be allowed seven days after receipt of written notice of that finding to submit a further showing of interest. This seven-day period shall not extend the times for filing a representation petition set out in 456 CMR 14.06. If sufficient showing of interest is not timely submitted by the petitioner the Commission may dismiss the petition. If sufficient showing of interest is not timely submitted by an intervenor the Commission may deny the intervenor either the opportunity to participate in or to challenge a consent election agreement between other parties, and/or the opportunity to appear on an election ballot.

14.06: Bars to Petitions; Elections

(1) Contract Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three years.

(b) Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, provided that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

(2) Withdrawal/Disclaimer Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner withdrew from a prior petition within the preceding 6 months.

(b) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner disclaimed interest in continued representation of the bargaining unit within the preceding six months.

(3) Election Year Bar. Except for good cause shown, no election shall be directed by the Commission pursuant to M.G.L. c. 150E, § 4, in any bargaining unit or subdivision thereof within which a valid election has been held in the preceding 12 months.

(4) Certification Year Bar. Except for good cause shown, the Commission will not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Commission has issued a certification of representative within the preceding 12 months.

(5) Recognition Year Bar. Except for good cause shown, no petition for an election will be processed by the Commission pursuant to M.G.L. c. 150E, § 4, in any represented bargaining unit or any subdivision thereof with respect to which a recognition agreement has been executed in accordance with the provisions of this subsection in the preceding 12-month period. For the purpose of 456 CMR 14.06, recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

(b) The employer has conspicuously posted a notice on bulletin boards where notices to employees are normally posted for a period of at least 20 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization in a specified bargaining unit;

(c) The employer shall not extend recognition to an employee organization if another employee organization has within the 20 day period notified the employer of a claim to represent any of the employees involved in said bargaining unit and has prior to or within such period filed a valid petition for certification which is pending before the Commission; and,

(d) Such recognition shall be in writing and shall describe specifically the bargaining unit involved.

(e) The employee organization is in compliance with the applicable filing requirements set forth in M.G.L. c. 150E, §§ 13 and 14.

14.07: Employees of the Commonwealth

(1) With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, § 4, shall be entertained, except in extraordinary circumstances where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section. Bargaining units shall be established on a state wide basis, with one unit for each of the following occupational groups, excluding in each case all managerial and confidential employees as so defined in M.G.L. c. 150E, § 1.

NONPROFESSIONAL EMPLOYEES:

UNIT 1: Administrative and Clerical, including all nonprofessional employees whose work involves the keeping or examination of records and accounts or general office work;

UNIT 2: Service, Maintenance and Institutional, excluding building trades and crafts and institutional security;

UNIT 3: Building Trades and Crafts;

UNIT 4: Institutional Security, including correctional officers and other employees whose primary function is the protection of the property of the employer, protection of persons on the employer's premises and enforcement of rules and regulations of the employer against other employees; and,

UNIT 5: Law Enforcement, including all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances, and regulations, and the preservation of public order.

PROFESSIONAL EMPLOYEES, as defined in M.G.L. c. 150E, § 1:

UNIT 6: Administrative, including legal, fiscal, research, statistical, analytical and staff services;

UNIT 7: Health Care;

UNIT 8: Social and Rehabilitative;

UNIT 9: Engineering and Science; and,

UNIT 10: Education.

(2) Notwithstanding any provision of this section, nothing shall prevent the Commission from finding appropriate:

- (a) the inclusion of related technical employees in any of the professional units designated 6 through 10, provided that the requirements of M.G.L. c. 150E, § 3. have been met;
- (b) one or more units of supervisory employees;
- (c) separate units for employees of constitutional officers;
- (d) separate units for employees of the judiciary;
- (e) separate units for employees of the General Court; and,
- (f) other units for employees of the Commonwealth specifically established by law.

14.08: Investigation and Hearing

(1) The Commission or a designated agent shall investigate a petition filed under M.G.L. c. 150E, § 4 to determine if there is reasonable cause to believe that a substantial question of representation exists. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition or to provide the Commission with position descriptions, affidavits, or other information the Commission believes to be relevant to the issues raised by the petition. If the Commission, upon investigation, has reasonable cause to believe that a substantial question of representation exists, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing upon the question of representation before the Commission at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

14.08: continued

(2) The Commission or a designated agent shall investigate a petition seeking clarification or amendment of an existing bargaining unit to determine if there is a sufficient dispute of relevant facts to warrant a hearing. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition or to provide the Commission with position descriptions, affidavits or other information the Commission believes is relevant to the issues raised by the petition. If the Commission, upon investigation, has reasonable cause to believe there is a sufficient dispute of relevant facts, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing upon the issues raised in the petition before the Commission at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(3) For the purpose of informing employees affected by the filing of a petition under 456 CMR 14.00, the posting of notices or orders of the Commission on the premises of an employer in a place readily accessible to the employees shall constitute due notice to such employees. Copies of the petition and the notice of hearing shall be so posted by the employer.

(4) Hearings conducted under 456 CMR 14.08 may be conducted by the Commission or a hearing officer or other agent designated by the Commission. The procedures specified in 456 CMR 13.03, 13.07, 13.08, 13.09, 13.10, 13.12, and 13.14 and the following procedures shall apply to all hearings conducted under 456 CMR 14.08:

- (a) Subject to 456 CMR 14.08(4)(c), any party to the proceeding shall have the right to appear in person, by counsel or by other representative, to call, examine, and cross-examine witnesses and to offer documentary or other evidence in to the record;
- (b) Any hearing conducted under 456 CMR 14.08 shall be open to the public, except in extraordinary cases as the Commission, in its discretion, may determine.
- (c) The Commission, hearing officer, or other designated agent shall have the right to inquire fully into the facts relevant to the issues raised by the petition and shall not be bound by the rules of evidence observed by the courts. The Commission or hearing officer shall have the authority to:
 1. To administer oaths and affirmations;
 2. To issue subpoenas;
 3. To rule on motions to revoke or modify subpoenas;
 4. To limit examination and cross-examination of each witness to one representative per party;
 5. To hold conferences for the settlement or clarification of the issues;
 6. To dispose of procedural motions or similar matters;
 7. To require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing;
 8. To call, question and cross-examine witnesses; introduce or require the parties to produce relevant documentary evidence; solicit stipulations from the parties; take administrative notice of evidence in related proceedings before the Commission; and to exclude cumulative evidence;
 9. To require the parties to submit pre-filed direct testimony;
 10. To continue the hearing from day to day or otherwise continue the hearing consistent with any applicable case processing time guidelines.
- (d) The parties shall be permitted to make oral arguments at the close of the hearing or may be permitted by the Commission, hearing officer, or agent to file written briefs within ten days after the close of the hearing. Requests for additional time to file briefs will be granted only in extraordinary circumstances or to permit parties an opportunity to obtain tapes of the hearing, provided that the time period for filing briefs, including any extensions that may be permitted, shall not exceed 21 days.

14.09: Record

The record before the Commission in a hearing conducted under 456 CMR 14.08 shall consist of the petition, notice of hearing, with return of service thereon, if available, appearance cards, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, depositions and amendments to any of the foregoing. The Commission shall base its decision on any issues raised in petitions filed under 456 CMR 14.00 based on this record.

14.10: Disposition of Petitions

The Commission or designated hearing officer shall proceed, within a reasonable time after the introduction of evidence, or after oral argument or the submission of briefs, or further hearing, as it may determine, to dismiss the petition, or to direct an election by secret ballot among the employees in a bargaining unit determined by it to be appropriate, or to make other disposition of the matter.

14.11: Consent Election Agreements

Where a petition has been duly filed, the employer, employee organization or person or persons representing a substantial number of employees involved and any intervenor which has submitted the required show of interest may, subject to the approval of the Commission, enter into a stipulation for the waiving of hearing and the conducting of a consent election. Such stipulation shall include a description of the appropriate unit, the time and place for holding the election and the payroll or the personnel list to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the supervision of the Commission or its agents.

14.12: Elections

When the Commission determines that an election by secret ballot shall be conducted or when it approves an agreement for a consent election it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, an election conducted in person, or any other means ordered by the Commission.

(1) Unless otherwise directed by the Commission, all elections shall be by secret ballot, provided, however, that no employee organization shall appear on the ballot unless the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14 pursuant to the provisions of 456 CMR 16.05. Whenever two or more employee organizations are included as choices in an election, a participant may, upon its request, have its name removed from the ballot; provided, however, that such employee organization gives timely notice in writing to all parties and to the Commission disclaiming any representational interest among the employees in the unit and provided that the ballots have not been printed, or Commission notices of the election posted, prior to the Commission's receipt of the employee organization's written request to remove its name from the ballot.

(2) Any party may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded by the Commission. If the number of challenged ballots is sufficient to determine the outcome of the election, then within seven days after the tally of ballots has been furnished each party must file with the Commission a short statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter's eligibility. The Commission may require the parties to submit further evidence or argument, in order to determine whether a hearing is warranted.

(3) At the conclusion of the election, the Commission shall furnish to the parties a tally of ballots. Within seven days after the tally of the ballots has been furnished, any party may file with the Commission an original and two copies of objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions which the Commission may permit, the Commission shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Commission does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election. If the Commission determines that probable cause exists to believe that conduct interfering with either the conduct of the election or the results of the election occurred, it shall conduct such further investigation and/or hearing as it shall deem appropriate, or, if no material facts are disputed it may issue a decision on the objections without further fact-finding proceedings.

14.12: continued

- (4) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Commission shall forthwith certify the result of the election.
- (5) The record in any hearing conducted pursuant to this section shall include the statement of objections or the statement concerning the eligibility of challenged voters, the responses thereto, and the tally of ballots, in addition to the applicable material specified in 456 CMR 14.09.

14.13: Runoff Elections

- (1) The Commission may conduct a runoff election when a valid election results in no choice receiving a majority of the valid ballots cast. No runoff election shall be conducted while objections to the election are pending. If all eligible voters cast valid ballots in an election involving two or more labor organizations and 50% voted for one labor organization while 50% voted for another labor organization, the Commission will conduct a runoff election between the two labor organizations which each received 50% of the votes. If all eligible voters cast ballots in a runoff election involving two or more labor organizations, the Commission may decline to conduct a second runoff election absent evidence that a further runoff election would be likely to produce a different result than the prior election.
- (2) Employees who were eligible to vote in the election shall be eligible to vote in a runoff election unless the Commission determines otherwise.
- (3) The ballot in a runoff election shall provide for a selection between the choices receiving the largest and second largest number of votes in the prior valid election.

14.14: Re-run Elections

- (1) The Commission may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot in the following situations:
 - (a) The ballot provided for a choice among two or more employee organizations and "neither" or "none" and the votes are equally divided among the several choices; or,
 - (b) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice (which did not receive a majority of valid votes cast); or,
 - (c) A runoff ballot provided for a choice between two employee organizations and the votes are equally divided (but see 456 CMR 14.13(1)).
 - (d) The Commission concludes that the results of the prior election are invalid due to objectionable conduct of the election or objectionable conduct affecting the results of the election.
- (2) Upon the conclusion of either a re-run or a runoff election, the provisions of 456 CMR 14.12 shall govern, insofar as applicable.

14.15: Reinvestigation of Certification

For good cause shown, the Commission may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

14.16: Revocation of Certification

An employee organization currently certified to represent a bargaining unit may request the Commission to revoke its certification by filing a written request accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. A copy of the request shall be served simultaneously on the employer of the bargaining unit.

14.17: Deferral to AFL-CIO No Raiding Procedure

In any petition filed under 456 CMR 14.03 by an employee organization affiliated with the AFL-CIO seeking to represent a bargaining unit represented at the time of filing by another employee organization affiliated with the AFL-CIO, any party may request the Commission to defer processing the case for 30 days to permit the employee organizations to use the settlement provisions of the AFL-CIO no-raiding procedure. Such a request must be filed with the Commission within ten days following receipt of notice that the petition has been filed, or at least three days prior to the date of the scheduled hearing on the petition, whichever is earlier. Upon written request by any party the Commission may extend the 30-day deferral period. Copies of any request must be served upon all parties to the case.

14.18: Intervention

(1) Any employee organization, including the incumbent exclusive representative, if any, wishing to appear on any ballot or be deemed a necessary party to any agreement for consent election shall file a motion to intervene setting out the same information as required in a petition filed pursuant to 456 CMR 14.03. Except for good cause shown, all motions to intervene filed under 456 CMR 14.18 must be filed within 30 days of the date of the Commission's Notice of Hearing. Any incumbent exclusive representative who does not file a motion to intervene in accordance with 456 CMR 14.18 shall be deemed to have disclaimed interest in representing the employees in the petitioned-for bargaining unit and shall not appear on any ballot or be deemed a necessary party to any agreement for consent election.

(2) Any motion filed under 456 CMR 14.18 must be accompanied by the showing of interest required in 456 CMR 14.05.

(3) Pursuant to 456 CMR 12.02, any party filing a motion to intervene under 456 CMR 14.18 shall serve a copy of its motion on each of the parties named in the original petition and any other intervenors.

14.19: Certification by Written Majority Authorization

(1) In initiating a petition for certification by written majority authorization, the employee organization shall file with the Division a petition, on a form approved by the Division, containing the following information:

- (a) The correct name, address, and affiliation of the employee organization and the name and address of its representative designated for the purpose of collective bargaining;
- (b) The correct name and address of the employer and, where known, the name and address of its representative designated for the purpose of collective bargaining;
- (c) A full description of the bargaining unit claimed to be appropriate, including job titles and the approximate number of employees;
- (d) A statement that the bargaining unit claimed to be appropriate complies with all the provisions of M.G.L. 150E, § 3 and 456 CMR 14.07;
- (e) A statement that the employee organization has received a written majority authorization, as described in 456 CMR 11.09, from a majority of the employees in the proposed appropriate bargaining unit;
- (f) A statement that no other employee organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit.
- (g) A statement that the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14; and
- (h) Any other relevant facts that may be required by the Division.

(2) The Petition for Certification by written Majority Authorization must be served on the Employer in accordance with 456 CMR 12.02; in addition, the Division shall make the Employer aware of such Petition when the Division requests the names and addresses of the members of the proposed bargaining unit for purposes of verification.

14.19: continued

(3) Upon filing and docketing of a petition for certification by written majority authorization, the Division shall prepare and serve a notice upon the parties that shall include information about the Petitioner and the proposed petitioned-for bargaining unit and advise the parties that they may agree upon a neutral to determine the validity of the written majority authorization.

(4) Within ten days from the date with the Division, the employee organization shall notify the Division whether the employee organization and the employer have agreed upon a neutral other than the Division (outside neutral) or whether the Division shall act as the neutral. If the employee organization fails to provide this notice to the Division, the Division shall act as the neutral. If the parties agree upon an outside neutral, the employee organization shall notify the Division of the outside neutral's name, address, phone and fax numbers, and e-mail address.

(5) Immediately upon selection of an outside neutral or designation of the Division as the neutral and in no event later than three days from selection or designation, the employer shall provide the neutral with a list containing the full names and titles of the employees in the proposed bargaining unit. If the employer does not supply this information to the neutral within the specified timeframe, the neutral shall determine the sufficiency of the written majority authorization based upon information provided by the employee organization. The employee organization shall provide this information to the neutral within two days from the date that the employer's information was due.

(6) Employees eligible for inclusion on the list referred to in 456 CMR 14.19(5), shall be employees who were employed on the filing date of the petition for written majority authorization. Any challenges to the inclusion or exclusion of a name on the list shall be filed by the employee organization or the employer with the neutral within three days of the presentation of the list to the neutral.

(7) Any challenges to the validity of the written majority authorization shall be filed with the neutral immediately upon his/hers/its selection or designation and in no event later than three days from the selection or designation.

(8) As part of the verification process detailed in 456 CMR 14.19(9) and (10), the neutral shall determine whether a majority of employees on the list referred to in 456 CMR 14.19(5), have signed valid written majority authorizations and whether there are a sufficient number of challenges referred to in 456 CMR 14.19(6) and (7), to affect the result of the written majority authorization process. If the number of challenges referred to in 456 CMR 14.19(6) and (7), is insufficient to potentially affect the result, then the neutral shall dismiss the challenges. If the number of challenges referred to in 456 CMR 14.19(6) and (7), is sufficient to potentially affect the result, the neutral shall investigate and resolve the challenges. The challenging party shall bear the burden of proving the validity of a challenge.

(9) If an outside neutral conducts the verification of written majority authorization, the outside neutral shall report in writing, on a form proscribed by the Division, the results of the confidential inspection, which shall comply with the Division's procedures, to the parties within 20 days, or less, of his/her/its selection as a neutral and shall also report the result in writing to the Division within that same time period. Along with the report of the inspection, the outside neutral shall provide to the Division all documentation that the outside neutral relied upon in conducting his/her/its confidential inspection, including, but not limited to, evidence of written majority authorization and resolution of challenges. Upon receipt of the outside neutral's written report and valid documentation of written majority authorization demonstrating that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit, the Division shall certify the results to the parties in writing.

14.19: continued

(10) If the Division acts as the neutral and conducts the verification of written majority authorization, the Division shall report the results of the confidential inspection to the parties in writing within 30 days from the date of its selection or designation as the neutral. Within this same timeframe, the Division shall certify the results of its confidential inspection to the parties in writing provided that the valid documentation of written majority authorization demonstrates that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit.

(11) In no event shall the Division issue a certification as described in 456 CMR 14.19(9) and (10), until the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14.

(12) In no event shall the verification process detailed in 456 CMR 14.19(9) and (10), last longer than 30 days after the selection or designation of the neutral absent exceptional cause. Exceptional cause may include, but is not limited to:

- (a) resolving challenges to the employee eligibility list and to the validity of written majority authorizations; and
- (b) allowing the petitioning employee organization a reasonable period of time, not to exceed seven days, to become in compliance with M.G.L. c. 150E, §§ 13 and 14.

14.20: Bars to Petitions for Certification by Written Majority Authorization

(1) Withdrawal Bar. Except for good cause shown, no written majority authorization petition shall be entertained in a same or similar bargaining unit within which, after the selection or designation of a neutral, but before the verification process, the petitioner withdrew from a prior written majority authorization petition within the preceding six months, or withdrew a petition filed under the provisions of M.G.L. c. 150E, § 4.

(2) Verification/Election Year Bar. Except for good cause shown, no written majority authorization petition shall be entertained in a same or similar bargaining unit within which a neutral has conducted a written majority authorization verification process in the preceding 12 months, or within which a valid election has been held in the preceding 12 months.

(3) Certification Year Bar. Except for good cause shown, no written majority authorization petition shall be entertained in a same or similar bargaining unit represented by a bargaining representative certified through the written majority authorization process or a valid election process in which the Division has issued a certification within the preceding 12 months.

14.21: Intervention in Written Majority Authorization Cases

Intervention shall not be permitted in written majority authorization cases. Before the Division issues a certification, written majority authorization petitions shall be dismissed and the Division will investigate questions of representation pursuant to M.G.L. c. 150E, § 4 under the following circumstances:

- (a) If an employee organization files a representation petition for the same or a similar bargaining unit to the one described in a pending written majority authorization petition;
- (b) If an employee organization files a written majority authorization petition for the same or a similar bargaining unit to the one described in a pending representation petition; or
- (c) If an employee organization files a written majority authorization petition for the same or a similar bargaining unit to the one described in a pending written majority authorization petition

REGULATORY AUTHORITY

456 CMR 14.00: M.G.L. c. 23, § 9R; c. 150E, § 3.

NON-TEXT PAGE

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 15.00: PROHIBITED PRACTICES

Section

- 15.01: Charges
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15.01: Charges

- (1) All charges filed under 456 CMR 15.00 shall be in the form prescribed by the Division.
- (2) A charge that any employer or employee organization has engaged in or is engaging in any prohibited practice as defined in M.G.L. c. 150E, §§ 10(a) and (b) may be made by any individual, employer, employee or employee organization.
- (3) A charge made under 456 CMR 15.00 shall be in writing and signed by the individual making it and shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

15.02: Contents of Charge

A charge made under 456 CMR 15.00 shall contain the following:

- (1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.
- (2) The full name and principal place of business of the employer, employee or employee organization against whom the charge is made, hereafter called the respondent.
- (3) An enumeration of the subdivision of M.G.L. c. 150E claimed to have been violated and a clear and concise statement of all relevant facts which cause the charging party to believe that the Law has been violated.
- (4) The respondent shall have the right to file a response within five days after the service of such charge or within such other time as the division may require.

15.03: Six-month Limitation

Except for good cause shown, no charge shall be entertained by the Division based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Division.

15.04: Investigation

(1) When a charge has been filed, the Director may refer the matter to an investigator. The investigator may issue an order dismissing the charge, deferring any charge which is the subject of a pending grievance or arbitration, referring any charge to one of the division's mediators, or directing that a hearing take place. Unless the charge is dismissed, deferred, or referred, the investigator shall promptly meet with the parties, investigate whether settlement of the charge is possible, clarify and narrow the issues before the charge is forwarded to a hearing, or dismiss the charge without a hearing. The investigator may dismiss the charge if she or he finds no probable cause to believe that a violation of 456 CMR 15.00 has occurred or if she or he otherwise determines that further proceedings would not effectuate the purposes of 456 CMR 15.00. After such investigation, if it appears to the Division that a hearing is required, it shall cause to be served upon the parties a complaint and a notice of hearing. The Division may decline to issue a complaint or may withdraw any complaint issued unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) No complaint shall be issued until the charging party has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.

(3) If, after a charge has been filed, the Division declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of such declination to issue a complaint by filing a request therefor with the Board within ten days from the date of receipt of notice of such refusal by the Division. Within seven days of service of the request for review, any other party to the proceeding may file a response with the Board. The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Division may extend the time for the filing of such request for review.

15.05: Amendments

(1) Before the receipt of any answer, any complaint may be amended as of right, and after the receipt of any answer, only with the permission of the Division.

(2) Any complaint or amended complaint or any part thereof may be withdrawn by the Division any time prior to the issuance of an order based thereon and upon such terms as the Division may deem just and proper.

(3) Any charge or amended charge or any part thereof may be withdrawn by the charging party prior to the issuance of a complaint. After a complaint has been issued the charge or amended charge may be withdrawn only with the permission of the Division.

15.06: Answers

(1) The respondent shall file an answer to a complaint within five days from the date of service, unless otherwise notified by the Division. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Division, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the respondent, the Division may extend the time within which the answer shall be filed.

15.07: Burden of Proof

The charging party shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

15.08: Waiver of Hearing

If the respondent desires to waive hearing on the allegations set forth in the complaint or the amended complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceedings or that respondent consents that the Division may make, enter and serve upon respondent an order to cease and desist from violations of M.G.L. c. 150E alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Either of the first two such answers shall have the same force and effect as if all the allegations of the complaint were admitted to be true and, as in that case, shall be deemed to waive a hearing thereon and to authorize the Division, without a hearing, without evidence and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violation of M.G.L. c. 150E charged in the complaint or to take such other action as provided in the Law. If the respondent does not file an answer, the Division may proceed in a like manner.

15.09: Record

(1) The record in a hearing under this chapter shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, deposition and amendments to any of the foregoing. Whenever a hearing concerns in whole or in part facts or issues which were or could have been litigated in a related representation proceeding the Division or hearing officer may incorporate in the record such parts of the record of the representation proceeding as may be appropriate.

(2) The record before the Board on review of a hearing officer decision shall be as set forth in 456 CMR 13.15(6).

(3) The record in a hearing designated for a Board decision in the first instance in which the Board has issued recommended findings of fact and/or recommended conclusions of law shall include the recommended findings and conclusions.

15.10: Expeditious Scheduling of Investigation or Hearing

When temporary relief or a restraining order has been procured by the Division or any party in connection with any charge or complaint under this chapter, the charge or complaint which has been the basis for such temporary relief or restraining order may be investigated or heard expeditiously. For other good cause shown by any party so requesting in writing, the Division also may determine that a charge or complaint will be investigated or heard expeditiously.

15.11: Interim Bargaining Order

When it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative in violation of M.G.L. c. 150E, § 10 and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the Division shall, upon request, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. When such interim order is issued, the Division shall hold a hearing on the complaint in a summary manner and shall speedily determine the issues raised.

15.12: Blocking Charges

(1) During the pendency of a petition filed pursuant to M.G.L. c. 150E, § 4 any party to the petition may file a motion with the Division requesting that a pending prohibited practice charge "block" the conduct of an election. Such motion shall be filed in accordance with the provisions of 456 CMR 13.07 and shall include a complete statement of the reasons supporting such motion. In addition a party contending that a pending prohibited practice charge should "block" the conduct of an election must, except for good cause shown, submit with the motion evidence sufficient to establish probable cause to believe that:

- (a) the conduct alleged in the prohibited practice charge has occurred;
- (b) the alleged conduct violates the Law; and
- (c) the alleged unlawful conduct may interfere with the conduct of a valid election.

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15.12: continued

(2) Upon receipt of such a motion the Division may investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter.

15.13: Referral and Deferral of Charges

At any time during the pendency of a charge at the Division, the Director may refer the matter to an investigator who may issue an order:

- (a) dismissing the charge; or
- (b) deferring any charge which is the subject of a pending grievance or arbitration; or
- (c) referring the charge to any one of the Division's mediators; or
- (d) directing that a hearing take place. In the case of charges involving police or fire fighters, the investigator may refer the case to the Joint Labor Management Committee, for such period of time as the Division shall determine in order to promote resolution of the issue.

REGULATORY AUTHORITY

456 CMR 15.00: M.G.L. c. 23, § 9T(c).

456 CMR 16.00: VARIOUS PROVISIONS OF THE LAW

Section

- 16.01: Filing of Contracts
- 16.02: Requests for Binding Arbitration
- 16.03: Strike Investigations
- 16.04: Petitions and Requests
- 16.05: Compliance with M.G.L. c. 150E, §§ 13 and 14
- 16.06: Advisory Rulings
- 16.07: Rule-making Hearings
- 16.08: Compliance with Enforcement of Division Orders

16.01: Filing of Contracts

For the purpose of 456 CMR 16.00, any collective bargaining agreement, the term of which does not exceed three years, which has been reduced to writing and executed by the employer or public employer and exclusive representative, shall be deemed to have been filed with the Division, for the purposes of satisfying the provisions of M.G.L. c. 150E, § 7, when an exact copy of said agreement has been filed by the employer, the exclusive representative, or any other person.

16.02: Requests for Binding Arbitration

- (1) When a party requests the Division to order binding arbitration, as provided in M.G.L. c. 150E, § 8, the party so requesting shall provide the Division the following information in writing:
 - (a) The full names and addresses of the employer and the employee organization involved.
 - (b) A clear and concise statement of the dispute concerning the interpretation or application of such written agreement. A copy of the grievance for which arbitration is requested must be submitted with the request, along with the date and disposition of the last step of the grievance procedure at which the grievance has been considered.
 - (c) A specific reference to the particular part or parts of the written agreement causing the dispute. A copy of the entire written agreement must be submitted with the request.
 - (d) Any other relevant facts which may be required in the request for binding arbitration forms issued by the Division.
- (2) Except for good cause shown, no request for binding arbitration shall be entertained by the Division more than 60 days after exhaustion of the contractual grievance procedure, if any.
- (3) All requests for an order of binding arbitration shall be filed in accordance with the requirements of 456 CMR 12.11. Requests for an order of binding arbitration shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of his or her knowledge or belief.
- (4) The request for an order of binding arbitration shall be served by the party filing it upon all other parties to the collective bargaining agreement at the same time that it is filed with the Division.
- (5) Within 15 days after receipt of a copy of a request for an order of binding arbitration, any other party to the collective bargaining agreement shall provide to the Division a statement indicating whether the party joins in the request for binding arbitration, opposes the request, or takes no position, and all legal or other arguments in support of its position.
- (6) Upon receipt of the submissions of the parties referenced above, the Board may conduct such further investigation as it deems necessary and may issue an order directing the parties to submit the grievance to binding arbitration, may dismiss the request for an order directing binding arbitration, or may authorize such other disposition of the matter as may effectuate the purposes of M.G.L. c. 150E.

16.03: Strike Investigations

- (1) When an employer petitions the Division to make an investigation of an alleged violation of M.G.L. c. 150E, § 9A(a), the employer shall include in the petition the following information:
 - (a) The name, address and telephone number of the employer, and its legal representative, if any.
 - (b) The names, addresses and telephone numbers, if known, of the employee organization and its officers or the public employees who are alleged to have violated or are about to violate the provisions of M.G.L. c. 150E, § 9A(a).
 - (c) The name, address and telephone number of counsel for the employee organization or public employees, if known.
 - (d) The place of employment of the public employee or employees and the services affected.
 - (e) A statement as to what facts cause the employer to believe that a strike has occurred or is about to occur or has been induced, encouraged or condoned.
 - (f) Any other relevant facts which may be of assistance to the Division.
- (2)
 - (a) The employer shall serve a copy of the petition on an officer or representative of the employee organization and on all named public employees alleged to have violated or to be about to violate M.G.L. c. 150E, § 9A(a). The petition served pursuant to 456 CMR 16.03(2)(a) shall contain a statement that the employer requests an investigation by the Division and that the employee organization or employees may contact the Division if they wish to present information pertinent to the investigation. The employer shall file an affidavit with the Division specifying its compliance with 456 CMR 16.03(2).
 - (b) The Division may require the employer to serve a notice of the time, date and place of an investigation, if any, to be conducted by the Division, upon an officer or representative of the employee organization and on each named public employee alleged to have violated or to be about to violate M.G.L. c. 150E, § 9A(a).
 - (c) The Board may investigate the allegations of the employer's petition and may determine whether a strike is occurring or about to occur upon consideration of the employer's allegations and such other evidence as the Board may consider.
- (3) Upon determination that a violation of M.G.L. c. 150E, § 9A(a) is occurring or is about to occur, the Board may issue orders setting requirements and may seek enforcement thereof. The Board may require the employer to serve such orders upon an officer or representative of the employee organization and upon each named public employee found to have violated M.G.L. c. 150E, § 9A(a).

16.04: Petitions and Requests

All petitions and requests filed under 456 CMR 16.00 shall be in writing and shall contain a declaration by the person signing it, under the pains and penalties of perjury, that its contents are true to the best of his or her knowledge or belief. The original and two copies of the petition or request shall be filed with the Division.

16.05: Compliance with M.G.L. c. 150E, §§ 13 and 14

For the purpose of 456 CMR 16.00, compliance with M.G.L. c. 150E, §§ 13 and 14 means that:

- (1) Each employee organization has filed the information required by M.G.L. c. 150E, §§ 13 and 14 on forms provided by the Division or the equivalent thereof, or for good cause shown, has received permission from the Division to extend the time for filing.
- (2) That each employee organization filing a petition or a charge, or seeking to intervene in a proceeding pending before the Division, shall make a declaration under oath or affirmation that it has complied with the requirements of M.G.L. c. 150E, §§ 13 and 14. In the event of failure to comply with 456 CMR 16.05 the Division may compel such compliance by appropriate order.

16.06: Advisory Rulings

- (1) Whenever a party to collective bargaining negotiations challenges the negotiability of a written proposal submitted to it by the opposing party, either party may petition the Division for an advisory ruling to determine whether the challenged proposal is within the scope of mandatory negotiations as defined in M.G.L. c. 150E, § 6. The party petitioning for an advisory ruling shall simultaneously serve one copy of the petition upon the respondent or the respondent's attorney or representative. The filing of a petition pursuant to 456 CMR 16.06 shall not affect either party's obligation to bargain under the Law.
- (2) When a party petitions for an advisory ruling, it shall file an original and four copies of such petition providing the Division with the following information:
 - (a) The full name and address of the petitioner;
 - (b) The full name and address of the petitioner's attorney or representative;
 - (c) The name and address of the respondent;
 - (d) The name and address of the respondent's attorney or representative;
 - (e) The text of the disputed proposal;
 - (f) A concise statement as to what aspect of the disputed proposal has been challenged and the substance of the challenge;
 - (g) Whether the parties are in negotiations, mediation or fact finding; and,
 - (h) Why an evidentiary hearing is not required.
- (3) The respondent shall within ten days of service of the petition by the petitioner file an original and four copies of a response providing the Division with the following information:
 - (a) Whether the information in the petition required by 456 CMR 16.06(2) is accurate and, if not, the reasons therefor.
 - (b) Whether the respondent considers the issuance of an advisory ruling appropriate and, if not, the reasons therefor.
- (4) The Board shall determine whether a petition presents an issue appropriate for an advisory ruling. If the petition is granted, the Board may allow the following:
 - (a) the filing of stipulations of facts;
 - (b) the filing of briefs and/or;
 - (c) oral argument.
- (5) The Board may render, after the filing of briefs or oral argument, if any, its advisory ruling upon the issues involved or otherwise dispose of the petition.
- (6) In any proceeding under M.G.L. c. 150E, § 11 which is based in whole or in part on the subject matter of proceedings under 456 CMR 16.06, the record made under 456 CMR 16.06 shall be made a part of the M.G.L. c. 150E, § 11 proceeding.

16.07: Rule-making Hearings

Whenever, pursuant to the provisions of M.G.L. c. 23, § 9T(c) or M.G.L. c. 30A, a rule-making hearing is held by the Division, the following procedural rules apply to the extent required by M.G.L. c.30A.

- (1) The Division will provide public notice of the proposed rules as required by M.G.L. c. 30A. Persons desiring to be heard with respect to proposed standards, rules or regulations including employers, employee organizations and members of the public are requested to appear at the designated time and place. A record of each such hearing will be kept.
- (2) Interested parties may be required to submit written statements regarding proposed standards, rules or regulations and such questions as they may have in advance of the hearing date and the time for such questions and responses may be limited by the Division.
- (3) Such questions as interested parties may have should be submitted in advance, whether or not the submitting party wishes to appear, since questions to witnesses may only be put by the Division or its agents. The order of presentation at the hearing will be as follows:

16.07: continued

- (a) The Division will present the proposed standards, rules or regulations and an explanation thereof.
 - (b) Persons requesting the opportunity to speak, and who at the same time submit four copies of a memorandum outlining their respective positions, will each be afforded no more than 15 minutes to make an opening statement, in the order in which such requests are received by the Director of the Division, provided such requests are received five days in advance of the hearing. Each request to speak must contain an estimation of the amount of time required to make a further presentation following opening statements, if desired, and a justification therefor.
 - (c) Following the opening statements, persons who complied with the provisions of 456 CMR 16.07(3)(b) may be allowed additional time for a further presentation, at the discretion of the Division, in the order followed for the opening statements.
 - (d) Other persons who request to speak, prior to or during the course of the hearing, may do so subject to the availability of time and to the Division's discretion.
- (4) The Division may limit presentations which are redundant, irrelevant or repetitious. Written statements or memoranda may be submitted for consideration by the Division within seven days after the close of a hearing or such further time as, upon written application, the Division shall allow.
- (5) Except to the extent that such waiver or modification may be inconsistent with the law, any of the procedures described relating to the conduct of a hearing may be waived or modified by the Division to prevent undue hardship or manifest injustice or as the expeditious conduct of business so requires.
- (6) A copy of M.G.L. c. 150E and a copy of the proposed standards, rules or regulations shall be made available for inspection at the Boston office of the Division and appropriate notice of any hearing given, in accordance with the requirement of M.G.L. c. 30A, §§ 3 and 9.

16.08: Compliance with Enforcement of Division Orders

- (1) When a party petitions the Division to seek enforcement of any order issued by the Division, the party so requesting shall provide the Division the following information, in writing:
 - (a) The name and address of the party requesting enforcement;
 - (b) The name and address of the requesting party's attorney or representative, if any;
 - (c) The name and address of the party alleged to be in non-compliance with an order of the Division;
 - (d) The name and address of the alleged non-complying party's attorney or representative;
 - (e) The Division case number and text of the specific order or portion thereof which the requesting party claims has not been complied with; and,
 - (f) A statement as to what facts cause the requesting party to believe that there has been non-compliance with the specific order described in 456 CMR 16.08(1)(e). Such statement shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury.
- (2) The party requesting the Division to seek enforcement of an order shall serve a copy of its request on the opposing party or its attorney or representative, if any.
- (3) The party alleged to be in non-compliance with an order of the Division shall, within ten days of service of the request for enforcement, or within such other time as the Division shall establish, file an original and four copies of the response, providing the Division with the following:
 - (a) A stipulation that the information in the request for enforcement is accurate; or,
 - (b) If it is contended that the information is not accurate, an explanation of the nature of any alleged inaccuracy and the reasons therefore. Such reasons shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury, specifying the steps taken to fully comply with the orders or portions thereof of the Division or any member or agent.

16.08: continued

- (4) In the event of the failure of the party alleged to be in non-compliance to respond to the request for enforcement or in the event of admission of non-compliance or in the event that the information provided in support of compliance is insufficient, the Division may institute appropriate enforcement proceedings.
- (5) If the Division determines that:
 - (a) the party requesting compliance has failed to provide the information in 456 CMR 16.08(1);
 - (b) the party alleged to be in non-compliance has provided sufficient information to warrant a conclusion that appropriate compliance has occurred; or,
 - (c) that no further action is necessary; the Division may decline to institute enforcement proceedings.
- (6) If the Division determines that there is a genuine dispute as to compliance, it may order that a hearing be held to determine whether compliance has occurred. At any hearing concerning the alleged non-compliance, the party required to comply with the Division's order shall have the burden of proving such compliance by a preponderance of the evidence. The provisions of 456 CMR 13.00, *et seq.* shall govern the proceeding insofar as applicable.
- (7) (a) Upon determination that a party is in non-compliance with an order of the Division or of a member or agent thereof, the Division may institute appropriate proceedings for enforcement of the order.
 - (b) If the Division, after consideration of the evidence and arguments of the parties, judges that the purposes of the Law would not be effectuated by instituting proceedings for enforcement, it may decline to institute proceedings for enforcement and shall so notify the parties.
- (8) The party requesting compliance may be required to provide the Division with assistance, including the furnishing of affidavits, witnesses and documents in preparation for an enforcement proceeding and may be required to bear the expenses associated therewith.
- (9) If, following receipt of a final court judgment enforcing a Division order, the Division declines to seek execution of the court judgment the Division's declination shall not preclude the party who desires such execution from seeking it independent of the Division.

REGULATORY AUTHORITY

456 CMR 16.00: M.G.L. c. 23, § 9T(c).

NON-TEXT PAGE

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 17.00: AGENCY SERVICE FEE

Section

- 17.01: Scope
- 17.02: Definitions
- 17.03: Ratification
- 17.04: Impermissible and Permissible Costs
- 17.05: Demand for Payment of a Service Fee
- 17.06: Challenge of a Service Fee
- 17.07: Escrow Account
- 17.08: Deferral to Rebate Procedure
- 17.09: Investigation
- 17.10: Complaint
- 17.11: Amendments
- 17.12: Answers
- 17.13: Hearing and Final Determination
- 17.14: Record
- 17.15: Burden of Proof
- 17.16: Non-payment of Fee

17.01: Scope

The purpose of 456 CMR 17.00 is to implement the provisions of M.G.L. c. 150E, § 12. 456 CMR 17.00 shall be applicable only to proceedings arising under M.G.L. c. 150E, § 12.

17.02: Definitions

Bargaining Agent shall mean the employee organization recognized by the employer or certified by the Commission as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining.

Bargaining Unit shall mean that group of employees represented by a bargaining agent which has been recognized by the employer or certified by the Division pursuant to M.G.L. c. 150E and 456 CMR 1.00 through 23.00.

Collective Bargaining Agreement shall mean a written agreement between a public employer and a bargaining agent which sets forth wages, hours, or other terms and conditions of employment for employees in a bargaining unit.

Escrow Account shall mean an account in a bank or comparable financial institution jointly administered by and payable to the charging party and the respondent bargaining agent.

Service Fee shall mean a sum of money which an employee is required as a condition of employment to pay to a bargaining agent pursuant to a collective bargaining agreement as provided in M.G.L. c. 150E, § 12.

Tender shall mean the actual production and unconditional offer to a representative of the bargaining agent of an amount no less than the amount demanded as a service fee.

17.03: Ratification

- (1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail in a mail ballot ratification procedure.

17.03: continued

(2) The ratification vote shall be taken by mail or at a meeting or meetings called by the bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 456 CMR 17.03(3).

(3) The vote shall be publicly counted, and the majority of valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

(4) The bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c. 150E, § 14.

(5) Notice of the ratification procedure shall be given by the bargaining agent in like manner to all employees in the bargaining unit at least five calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than five days. The notice shall include the following information:

- (a) The time and place of the meeting(s) or details of the mail ratification procedure;
- (b) A statement that the proposed collective bargaining agreement, if ratified, will require payment of a service fee as a condition of employment;
- (c) The current amount of the service fee;
- (d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ratification;
- (e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;
- (f) The full identity, including affiliations, of the bargaining agent; and,
- (g) A statement that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

17.04: Impermissible and Permissible Costs

(1) Costs attributable to the following shall be deemed impermissible in computing a service fee:

- (a) Expenditures for political candidates or political committees formed for a candidate or political party;
- (b) Establishing and publicizing of an organizational preference for a candidate for political office;
- (c) Lobbying or efforts to enact, defeat, repeal or amend legislation or regulations unrelated to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;
- (d) Expenditures for charitable, religious or ideological causes not germane to a bargaining agent's duties as the exclusive representative;
- (e) Benefits and activities which are:
 - 1. not germane to the governance or duties of the bargaining agent, and,
 - 2. available only to the members of the employee organization which is the exclusive bargaining agent;
- (f) Fines, penalties or damages arising from the unlawful activities of a bargaining agent or a bargaining agent's officers, agents or members;
- (g) Overhead and administrative costs allocable to any activity listed in 456 CMR 17.04(1)(a) through (f).

(2) Costs attributable to the following shall be deemed permissible to the extent that they are not deemed impermissible under 456 CMR 17.04(1).

17.04: continued

- (a) Preparation, negotiation, and ratification of collective bargaining agreements;
- (b) Adjusting employee grievances and complaints;
- (c) The public advertising of positions on the negotiating of, or provisions in, collective bargaining agreements, as well as on matters relating to the collective bargaining process and contract administration;
- (d) Purchasing of materials and supplies used in matters relating to the collective bargaining process and contract administration;
- (e) Paying specialists in labor law, negotiations, economics and other subjects for services used in matters relating to working conditions and to the collective bargaining process and contract administration;
- (f) Organizing within the charging party's bargaining unit;
- (g) Organizing bargaining units in which charging parties are not employed, including units where there is an existing exclusive bargaining agent;
- (h) Defending the employee organization seeking a service fee against efforts by other unions or organizing committees to gain representation rights in units represented by the employee organization seeking an agency fee or by its affiliates;
- (i) Proceedings involving jurisdictional controversies under the AFL-CIO constitution or analogous provisions governing bargaining agents that are not affiliated with the AFL-CIO;
- (j) Lobbying or efforts to enact, defeat, repeal, or amend legislation or regulations relating to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;
- (k) Paying costs and fees to labor organizations affiliated with the bargaining agent seeking an agency fee;
- (l) Meetings and conventions;
- (m) Publications of the bargaining agent seeking a service fee;
- (n) Lawful impasse procedures to resolve disputes arising in connection with negotiating and enforcing collective bargaining agreements;
- (o) Professional services rendered to the exclusive bargaining agent and its affiliates;
- (p) Wages and benefits for persons employed by the bargaining agent;
- (q) All other activities not listed in 456 CMR 17.04(1);
- (r) Overhead and administrative costs allocable to any item in 456 CMR 17.04(2)(a) through (q).

17.05: Demand for Payment of a Service Fee

- (1) A bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.
- (2) A bargaining agent making a written demand pursuant to 456 CMR 17.05(1) shall attach to the demand a copy of 456 CMR 17.00.
- (3) No demand for payment of a service fee under 450 CMR 17.05 shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.

17.06: Challenge of a Service Fee

- (1) Employees may challenge the validity or amount of a service fee by filing a prohibited practice charge with the Division .
Validity shall mean whether there has been compliance with the provisions of 456 CMR 17.03 and 17.05.
Amount shall mean whether some or all of the service fee demanded by a bargaining agent is impermissible under 456 CMR 17.04(1).

17.06: continued

- (2) Except for good cause shown, a charge challenging the amount of a service fee or its validity under 456 CMR 17.03 or 17.05 shall be filed within six months after the bargaining agent has made a written demand for payment of the fee pursuant to 456 CMR 17.05.
- (3) A charge challenging the validity or amount of a service fee shall contain the following:
 - (a) The full name(s) and address(es) of the individual(s) making the charge.
 - (b) The full name and address of the bargaining agent against whom the charge is made.
 - (c) The date the bargaining agent made a written demand for payment of the fee pursuant to 456 CMR 17.05.
 - (d) The amount of the regular membership dues.
 - (e) The amount of the service fee assessed by the bargaining agent, and the effective dates of the contract under which the fee was assessed.
 - (f) If an employee is contesting the validity of the service fee under 456 CMR 17.03 or 17.05, a clear and concise statement of the reasons for the charge, including all relevant facts on which the charge is based.
 - (g) If an employee is contesting the amount of the fee, a general statement of the reasons for the charge.
 - (h) The signature of the individual making the charge or his or her representative.
 - (i) A statement as to whether the charging party has used the bargaining agent's rebate procedure and the result of that procedure.
 - (j) A declaration by the individual making the charge, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

17.07: Escrow Account

- (1) An employee filing a charge contesting the amount of a service fee with the Division shall jointly establish and administer an escrow account with her/his bargaining agent.
- (2) The amount deposited in the escrow account must be equal to the full amount of the service fee for the disputed period of time, or equal to whatever amount remains in dispute after partial settlement between the employee and the bargaining agent seeking the fee.
- (3) Except for good cause shown, the charging party shall file with the Division evidence of the establishment of an escrow account before the date of the Division's investigation of the charge pursuant to 456 CMR 17.09. Failure to submit such evidence may result in dismissal of the charge.
- (4) Failure of the bargaining agent to cooperate in the establishment of the escrow account may waive its right to the establishment of the escrow. If the bargaining agent waives its right to an escrow, the charging party will not be required to pay a service fee until the Division determines the fee due pursuant to 456 CMR 17.13.
- (5) Until a final order is issued by the Commonwealth Employment Relations Board, the charging party shall continue to pay into the escrow account as such sums become due an amount equal to the service fee, or equal to whatever amount remains in dispute following the Division's investigation pursuant to 456 CMR 17.09.

17.08: Deferral to Rebate Procedure

At any time after the establishment of an escrow account pursuant to 456 CMR 17.07, the Division may defer to a bargaining agent's procedure for rebating impermissible expenses to members of the bargaining unit. In order for the Division to consider deferral, a rebate procedure must meet the following standards:

- (1) Disputed amounts shall be placed in escrow during the pendency of the rebate proceedings;
- (2) The bargaining agent shall establish the justification for the fee demanded;

456 CMR: DIVISION OF LABOR RELATIONS

17.08: continued

- (3) The bargaining agent shall make available to the dissenting employee the books and records on which the bargaining agent relies to justify the amount of the service fee demanded;
- (4) The procedure shall provide for a hearing or similar proceeding before a neutral decision-maker in order to determine impermissible and permissible costs used in determining the fee, in accordance with the standards set forth in 456 CMR 17.04;
- (5) At any hearing or similar proceeding, the dissenting employee shall be entitled to a representative of her or his choice;
- (6) The costs arising from the hearing before a neutral decision-maker shall be borne by the bargaining agent; and
- (7) The procedure shall not be unduly lengthy, cumbersome, or burdensome.

17.09: Investigation

- (1) When a charge has been filed under 456 CMR 17.00, the Division or its designated agent shall conduct an investigation to ascertain whether there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or that a dispute exists concerning the amount of the fee demanded.
- (2) Either at or before the investigation, the bargaining agent shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.
- (3) If, upon investigation, the Division determines that any portion of the service fee is clearly payable to the bargaining agent or the charging party, that portion of the fee shall be released from the escrow account and promptly remitted to the bargaining agent or the charging party. The Division's determination shall be based upon the financial data made available by the bargaining agent for its previous contract period. In the case of a newly-certified or recognized bargaining agent whose first contract contains a valid service fee clause, the Division shall make the determination based on the bargaining agent's actual or estimated costs. The determination shall be valid over the term of the collective bargaining agreement under which the service fee is demanded.
- (4) The charging party shall be required to continue paying into the escrow account only that portion of the service fee which the Division determines remains in dispute. Such payments to the escrow account shall be made as they become due. The portion of the fee determined by the Division to be owing to the bargaining agent shall be remitted to the bargaining agent as such payments become due.

17.10: Complaint

- (1) If, after investigation, there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or the amount of the service fee remains in dispute, the Division shall serve a written complaint upon the parties and shall provide for an appropriate hearing. The Division may decline to issue a complaint unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.
- (2) If, after investigation, the Division declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of the decision not to issue a complaint by filing a request for review with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Division. The request shall contain a statement of the reasons upon which the request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Division may extend the time for filing of such a request for review.

17.11: Amendments

- (1) Upon its own motion, or upon the motion of any party, the Division or its hearing officer may allow amendment of any complaint at any time prior to the issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.
- (2) Any charge or amended charge filed, or any part thereof, may be withdrawn by the charging party prior to the issuance of a complaint.
- (3) Any complaint or amended complaint, or any part thereof, may be withdrawn by the Division at any time prior to the issuance of an order based thereon and upon such terms as the Division may deem just and proper.

17.12: Answers

- (1) The bargaining agent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Division. The bargaining agent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless it is without knowledge, in which case it shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the bargaining agent shall state in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Division, unless good cause to the contrary is shown.
- (2) Upon its own initiative or upon proper cause shown by the bargaining agent, the Division may extend the time within which an answer shall be filed.

17.13: Hearing and Final Determination

Except for good cause, the Division will schedule a hearing pursuant to 456 CMR 13.00 to make a final determination on the amount of the service fee either after the collective bargaining agreement under which the fee is demanded has expired or at the end of the period of time for which the fee is demanded. At least seven days before the hearing, the bargaining agent upon request shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.

17.14: Record

- (1) The record in an expedited or formal hearing under 456 CMR 17.00 shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, tape recording or stenographic transcription, stipulations, exhibits, documentary evidence and amendments to any of the foregoing.
- (2) The record before the Commonwealth Employment Relations Board on review of a hearing officer's decision shall be as set forth in 456 CMR 13.15(6).

17.15: Burden of Proof

- (1) When a complaint issued under 456 CMR 17.00 alleges that a service fee is invalid under 456 CMR 17.03 or 17.05, the burden of proof shall be on the charging party to establish the defects by a preponderance of the evidence.
- (2) When a complaint issued under 456 CMR 17.00 alleges that part or all of the amount of a service fee is impermissible under 456 CMR 17.04, the burden of proof shall be on the bargaining agent to establish by a preponderance of the evidence that the contested amounts are permissible.

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17.16: Non-payment of Fee

(1) If an employee, after demand by the bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the bargaining agent may request the employee's termination or other sanction. The employer, after reasonable notice to the employee, shall terminate or otherwise sanction the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated or otherwise sanctioned who has tendered the required service fee prior to the decision to terminate or otherwise sanction; and provided further that payment of a service fee shall not be required before the 30th day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(2) No employee who has filed a charge with the Division and established an escrow account, if required under the provisions of 456 CMR 17.06 and 17.07, shall be terminated or otherwise sanctioned for failure to pay the service fee during the pendency of the charge before the Division .

REGULATORY AUTHORITY

456 CMR 17.00: M.G.L. c. 23, § 9T(c).

NON-TEXT PAGE

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 18.00: DESIGNATION OF DIVISION AGENTS

Section

- 18.01: Director
- 18.02: Attorneys
- 18.03: Other Agents
- 18.04: Special Designations

18.01: Director

The Director of the Division of Labor Relations is hereby designated as the executive and administrative head of the Division and as such shall have charge of the administration of the Division as follows:

- (1) The Director shall have the authority, pursuant to M.G.L. c. 30A, and after consultation with the Advisory Council and the members of the CERB, to issue any regulation for the enforcement and administration of M.G.L. c. 23, §§ 9T and 9U and M.G.L. c. 150, c. 150A, and c. 150E.
- (2) The Director shall prepare an annual operating budget and other funding requirements and requests pursuant to M.G.L. c. 23, § 9T to be submitted to the Executive Office of Labor and Workforce Development.
- (3) In addition to the responsibilities specified in 456 CMR 18.01(1) and (2), the Director's duties shall include, but not be limited to, the following:
 - (a) the training of newly appointed board members, hearing officers, mediators, arbitrators, investigators, and any other staff as to their responsibilities and powers, including, but not limited to: the conduct of investigations, conferences, hearings, and mediations; the prompt, clear, and concise writing of decisions; and the prompt resolution of labor disputes brought to the attention of the division;
 - (b) the establishment of an annual training program to instruct all board members, hearing officers, mediators, arbitrators, investigators, and any other staff as the director deems appropriate, in matters related to their professional development;
 - (c) the establishment of reasonable criteria, in conjunction with the general counsel, and after consultation with the Advisory Council, upon which to perform an annual review of each Board member;
 - (d) the establishment of performance standards for all of the functions of the division;
 - (e) the appropriate allocation of all disputes brought to the attention of the division, to ensure that all professional staff receive balanced and equitable case loads; and
 - (f) the hiring, supervision, and evaluation of hearing officers, mediators, arbitrators, investigators, and other staff, for the purpose of fostering more

18.02: Attorneys

The Division may designate any attorney it employs, as its agent:

- (1) to promote any inquiry necessary to the performance of the Division's functions;
- (2) to conduct any election as directed by the Division or designated agent thereof;
- (3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00; and,
- (4) to appear for and represent the Commission in any case in court.

456 CMR: DIVISION OF LABOR RELATIONS

18.03: Other Agents

The Division may designate any person it employs as its agent:

- (1) to prosecute any inquiry necessary to the performance of the Division's functions;
- (2) to conduct any election as directed by the Division or designated agent thereof; and
- (3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00.

18.04: Special Designations

The foregoing designations shall not be construed to limit the power of the Division to make other special designations as may, in its discretion, be necessary or proper to effectuate the purposes of M.G.L. c. 150E and to appoint any attorneys, hearing officers or other persons as it may deem necessary for the proper performance of its duties as designated in the Law.

REGULATORY AUTHORITY

456 CMR 18.00: M.G.L. c. 23, § 9T(c).

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 19.00: ADVISORY COUNCIL

Section

19.01: Creation

19.01: Creation

- (1) There is created in the Division of Labor Relations an Advisory Council to advise the Division of Labor Relations concerning policies, practices, and specific actions that the Division might implement to better discharge its labor relations duties. The Executive Director shall provide for the council suitable meeting space and such clerical and other assistance as the Director and the Council may deem necessary.
- (2) The advisory council shall consist of 13 members to be appointed by the Governor, five of whom shall be members or representatives of public sector labor unions and five of whom shall be representatives of public sector managers, including the Director of Employee Relations for the Commonwealth. Seven members shall constitute a quorum for purposes of holding a meeting and voting. No action shall be taken by the Council without the affirmative vote of at least seven members. All members of the advisory council shall serve without compensation and at the pleasure of the governor. The Advisory Council shall meet no less than quarterly during each calendar year. Meetings of the Advisory Council shall be called by the Chair or upon petition by a majority of voting members. Such meetings shall be subject to M.G.L. c. 30A, § 11A½. The Director of Labor, the Chair of the Commonwealth Employment Relations Board, and the Executive Director of the Division of Labor Relations shall serve as *ex-officio* non-voting members of the Advisory Council.
- (3) The Governor shall designate one of the Council members as Chair of the Advisory Council. The Chair shall serve for no more than two years, and the position shall rotate among employee, employer, and public members. No member of the Advisory Council shall be subject to M.G.L. c. 31.
- (4) With the approval of the advisory council, the Director of Labor may establish standards regarding the performance of the division, and require periodic reports from the Executive Director of the Division regarding the Division's attainment of such standards.

REGULATORY AUTHORITY

456 CMR 19.00: M.G.L. c. 23, § 9T(c).

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456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 20.00: CONSTRUCTION OF RULES, AMENDMENT AND PUBLICATION

Section

20.01: Construction

20.02: Amendment

20.03: Publication

20.04: Severability

20.01: Construction

456 CMR 1.00 through 23.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150E.

20.02: Amendment

456 CMR 1.00 through 23.00 may be amended or rescinded by the Commission from time to time.

20.03: Publication

456 CMR 1.00 through 23.00 shall be published in convenient form.

20.04: Severability

If any of 456 CMR 1.00 through 23.00 should be declared invalid by any final order or decree of a court with proper jurisdiction, such invalid provision or rule will be severed.

REGULATORY AUTHORITY

456 CMR 20.00: M.G.L. c. 23, § 9R.

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456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 21.00: RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION

Section

- 21.01: Scope
- 21.02: Confidentiality
- 21.03: Initiation of Interest Mediation and Fact-finding
- 21.04: Voluntary Interest Mediation
- 21.05: Appointment of a Mediator
- 21.06: Mediator's Function
- 21.07: Public Access
- 21.08: Mediator's Report
- 21.09: Designation of a Fact-finder
- 21.10: Withdrawal of Fact-finder
- 21.11: Fact-finder's Responsibility
- 21.12: Mediation during Fact-finding
- 21.13: Hearing before the Fact-finder; Subpoenas
- 21.14: Fact-finding Report
- 21.15: Termination of Fact-finding
- 21.16: Mediation after Fact-finding
- 21.17: Compensation of the Fact-finder
- 21.18: Certification of Completion of the Collective Bargaining Process
- 21.19: Voluntary Interest Arbitration
- 21.20: Private Sector Interest Mediation

21.01: Scope

M.G.L. c. 30A and M.G.L. c. 150E, § 9, provide that the Division of Labor Relations (Division) can adopt such rules as may be required to regulate the conduct of mediation and fact-finding proceedings in public employment, including state, county, municipal, and district government.

21.02: Confidentiality

Public policy and the success of the Division's mission require that the Division and its employees maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, § 10A, and M.G.L. c. 150E, § 9, any person acting as a mediator, including a fact-finder or interest arbitrator, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

21.03: Initiation of Interest Mediation and Fact-finding

(1) Petition for Mediation and Fact-finding. If a public employer and an employee organization have negotiated for a reasonable period of time and an impasse exists over one or more issues arising out of the negotiations, the public employer, the employee organization, or the parties jointly, may file a Petition for Mediation and Fact-finding with the Division (MBCA FORM F-1). If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of 456 CMR 21.03(1).

The party or parties requesting mediation and fact-finding shall mail the original petition and one copy, signed by the petitioning party or parties, to:

Division of Labor Relations
19 Staniford Street
Boston, MA 02114
FAX # (617) 626-6933

Upon receipt, the Division will stamp the petition with the date of receipt.

21.03: continued

If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition and a copy of the pertinent collective bargaining agreement to the Board in the manner set forth in 456 CMR 21.03(1).

(2) Unilateral Petitions. A petitioning party proceeding unilaterally must serve the petition on the principal representative of the other party by first-class mail, postage prepaid. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with 456 CMR 21.00. Failure to so state will suspend the processing of the petition.

21.04: Voluntary Interest Mediation

At any time during bargaining, whether or not a Petition for Mediation and Fact-finding has been filed, an employee organization or a public employer may request mediation assistance in resolving a collective bargaining dispute. The Division will provide mediators for this purpose.

21.05: Appointment of a Mediator

(1) Investigation. Upon receipt of the petition, the Division shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. The Division will notify the parties of the results of its investigation within ten days of the filing of the petition if it finds that the parties are not at impasse. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

(2) Appointment. Within five days of the determination of an impasse, the Division will promptly appoint a mediator to assist the parties in the resolution of the impasse.

(3) Selection. The mediator may be appointed from the staff of the Division unless the parties have stated in the Petition for Mediation and Fact-finding that they jointly request that the Division appoint an outside mediator. If the parties request an outside mediator they shall specify on the Petition for Mediation and Fact-finding the name, address, and telephone number of the person so selected. If the parties jointly request the appointment of a particular staff mediator, due consideration will be given to such request.

(4) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator is required to disclose to the Division any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify him or her as an impartial mediator.

(5) Fees. There will be no cost to the parties for a staff mediator. The cost of an outside mediator, selected by the parties, will be equally divided between the parties unless they agree otherwise.

21.06: Mediator's Function

(1) The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session. However, the mediator retains ultimate control over the scheduling of mediation sessions.

(2) Pursuant to M.G.L. c. 150E, § 9, the mediator is empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

21.07: Public Access

There shall be no public access to mediation sessions.

21.08: Mediator's Report

After a reasonable period of mediation, the staff or outside mediator shall report in writing to the Division the results of his or her efforts to resolve the impasse. This confidential report will contain the following information:

- (1) The names of the parties;
- (2) A statement of the dates of the first contacts with both the employer and the employee organization;
- (3) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (4) A statement of the issues that have been resolved through the mediation effort;
- (5) A statement of the issues that are still unresolved, if any; and
- (6) A recommendation as to whether the Director of the Division should invoke fact-finding.

21.09: Designation of a Fact-finder

- (1) Appointment by the Division. If 456 CMR 21.08: *Mediator's Report* reveals that an impasse continues to exist, the Division shall send written notice to both parties informing them that mediation has not resolved the impasse and that the Division intends to act upon the petition for mediation and fact-finding by appointing a fact-finder. Promptly thereafter, the Division will appoint a fact-finder from its list of qualified individuals.
- (2) Selection by Alternative Means. If the parties jointly agree to select the fact-finder in an alternative manner, they must jointly inform the Division before the Division appoints a fact-finder. The parties must also inform the Division of the name, address, and telephone number of the fact-finder so selected.
- (3) Letter of Appointment. After a fact-finder has been selected or appointed, the Division will promptly send a letter of appointment and a copy of the petition to the fact-finder. Copies of the letter will be sent to both parties. The fact-finder is required to promptly notify the Division whether he or she accepts the appointment.
- (4) Disqualification or Withdrawal of the Fact-finder. If the fact-finder has represented an employer or an employee organization within the last 12 months, the appointment will be absolutely revoked by the Division. Moreover, the fact-finder is required to disclose to the Division and the parties any circumstances likely to create a presumption of bias or which the fact-finder believes might disqualify him or her as an impartial fact-finder. Following such a disclosure, the Division will revoke the fact-finder's appointment unless both parties waive this presumptive disqualification. If a fact-finder is disqualified, resigns, dies, or withdraws from his or her duties, the Division will appoint another fact-finder in accordance with 456 CMR 21.09(1).

21.10: Withdrawal of Fact-finding Petition

A fact-finding petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a fact-finder. After the appointment of a fact-finder, a fact-finding petition may be withdrawn only by joint agreement of the parties. The parties will compensate the fact-finder for such services as he or she performed in accordance with 456 CMR 21.17.

21.11: Fact-finder's Responsibilities

- (1) Authority. The appointed fact-finder will have the authority and responsibility for the conduct of the fact-finding proceedings, and will have sole discretion in deciding any issues of procedure. The fact-finder shall immediately advise the Division if a work stoppage has occurred or is imminent.
- (2) Scheduling of Conferences and Hearings. The fact-finder shall consult with each party concerning the time, date, and place of each meeting or hearing. The fact-finder shall make an effort to expedite the process. The fact-finder will be sole judge of scheduling, and his or her ruling as to time, date, place, adjournment, or continuance of any meeting or hearing will be final and binding. Within a reasonable period of time prior to any hearing, the fact-finder shall serve upon each of the parties and the Division, by first class mail, postage prepaid, a written notice of the time, place, and date of such hearing.

21.12: Mediation during Fact-finding

- (1) Authority. The fact-finder or mediator has the authority to mediate the dispute.
- (2) Mediation Proceedings. When acting as mediator, the fact-finder may hold separate or joint meetings with the parties. There shall be no public access to mediation sessions.
- (3) Report to the Division. If the dispute is settled through mediation by the fact-finder, the fact-finder shall promptly notify the Division of the date and terms of the settlement.

21.13: Hearing before the Fact-finder; Subpoenas

- (1) Proceeding in the Absence of a Party. Fact-finding may proceed in the absence of a party who, after notice given in accordance with 456 CMR 21.11, fails to appear for a conference or hearing or to obtain a continuance. The fact-finder may choose not to base the report solely upon the presentation of the appearing party. If any party to the dispute fails to appear or to cooperate with the fact-finder, the fact-finder may determine what further evidence is required and may obtain and use any evidence deemed relevant. The fact-finder shall disclose to the appearing party what evidence he or she intends to use and shall give the appearing party an opportunity to respond to such evidence.
- (2) Waiver of Fact-finding Hearing. The parties may agree to waive the fact-finding hearings. The fact-finder is authorized to issue the report on the basis of whatever documents and stipulations are submitted.
- (3) Representation. Any party may be represented by counsel or other person of its choosing. Such counsel or representative has exclusive authority to present that party's case.
- (4) Third Party Intervention. The fact-finder has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.
- (5) Order of Proceedings. The fact-finder will:
 - (a) Obtain from the parties a statement of the issues in dispute;
 - (b) Determine the order in which the parties present their cases. In the case of a unilateral petition, the petitioning party will ordinarily present its case first;
 - (c) Afford each party a full and fair opportunity to present all relevant evidence.
- (6) Fact-finder's Authority to Issue Subpoenas and Administer Oaths. The fact finder shall have the authority, upon delegation of the Division, to administer oaths, to take the testimony of any person under oath, and to issue subpoenas to compel the attendance of witnesses or the production of documents (MBCA Form CA5). A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective.

21.13: continued

(7) Waiver of Objections. Any party to a fact-finding hearing who fails to make a timely objection, as determined by the fact-finder, to an infraction of 456 CMR 21.00 will be deemed to have waived that objection.

(8) Briefs. Upon the close of the hearings each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs will be established by the fact-finder after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding will be at the discretion of the fact-finder.

21.14: Fact-finding Report

(1) Form and Contents. After the close of the hearing and the submission of briefs, if any, the fact-finder will prepare, sign, and date a written fact-finding report. It should include:

- (a) a statement of the issue(s);
- (b) the findings of fact regarding the issue(s);
- (c) a statement of the recommendation for each issue;
- (d) the rationale for the recommendation reached on each issue; and
- (e) a summary cover sheet containing a complete statement as to the fact-finder's recommendations on all issues.

(2) Service of the Report. The fact-finder must send, by certified mail, two copies of the fact-finding report to the Division and one copy to the counsel or representative of each party to the dispute.

(3) Clarification of Report. One or both parties may request that the fact-finder clarify any recommendation in the fact-finding report. This request must be received by the Division within seven days of the date of the report. The party(ies) making this request must also send a copy of the request to the fact-finder. The fact-finder will attempt to dispose of such request within ten days of the Division's receipt of the report. The fact-finder must promptly determine whether the clarification is warranted and then notify the parties and the Division in writing or by conference of the disposition of the request for clarification.

(4) Action on Report. If the parties fail to notify the Division as to the disposition of the fact-finder's report within ten days after the Division's receipt of the report, the Division will assume that no agreement between the parties has been reached on the issues in dispute.

(5) Publication of the Report. If the impasse remains unresolved ten days after the Division's receipt of the fact-finder's report, the Division will make it public.

21.15: Termination of Fact-finding

Unless the parties agree otherwise, the fact-finder will perform no further service in connection with the dispute once the fact-finding report and clarification, if any, have been served. The fact-finder will keep the Division informed of his or her activities and will notify the Division promptly of any settlement of the dispute and of the terms of the settlement.

21.16: Mediation after Fact-finding

If the parties are unable to come to agreement after the receipt of the fact-finder's report, a staff mediator may be appointed to assist them in resolving the dispute.

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21.17: Compensation of Fact-finder

The fact-finder will be entitled to the compensation rate contained in his or her resume on file with the Division, for each day or portion thereof spent in hearing, preparation, and issuance of the fact-finder's report, including clarification, if any, and in mediation. The fact-finder will also be entitled to reimbursement for necessary and ordinary expenses. The costs for fact-finding will be equally divided between the parties unless they agree otherwise. The fact-finder's bill showing the amount payable by each of the parties must accompany the final fact-finding report. The fact-finder may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills must also be sent to the Division. The parties shall make payment directly to the fact-finder.

21.18: Certification of Completion of the Collective Bargaining Process

Either or both parties may request the Division to certify to the parties that the collective bargaining process, including mediation, fact-finding, or arbitration, if applicable, has been completed. If the Division determines that the dispute resolution mechanisms provided for in M.G.L. c. 150E, § 9 have been exhausted, it will certify to the parties that the collective bargaining process has been completed.

21.19: Voluntary Interest Arbitration

Upon joint request of the parties, the Division will administer any written and duly authorized agreement to enter into final and binding interest arbitration of a collective bargaining dispute.

21.20: Private Sector Interest Mediation

Upon request, the Division may appoint a mediator to assist in the resolution of a private sector interest mediation dispute.

REGULATORY AUTHORITY

456 CMR 21.00: M.G.L. c. 23, § 9T(c).

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456 CMR 22.00: GRIEVANCE MEDIATION AND ARBITRATION IN THE PUBLIC AND PRIVATE SECTORS

Section

- 22.01: Scope
- 22.02: Confidentiality
- 22.03: Voluntary Grievance Mediation
- 22.04: Appointment of Mediator
- 22.05: Mediator's Function
- 22.06: Admissibility of Grievance Mediation in Arbitration
- 22.07: Initiation of Grievance Arbitration
- 22.08: Appointment and Qualifications of the Arbitrator
- 22.09: Scheduling of Hearing by the Division
- 22.10: Issuance of Subpoenas
- 22.11: Hearing before the Arbitrator
- 22.12: Arbitration Awards
- 22.13: Clarification, Modification, or Correction of Awards
- 22.14: Publication of Award and Opinion
- 22.15: Request for Arbitration Before an *Ad Hoc* Arbitrator

22.01: Scope

456 CMR 22.00 governs the procedures for mediation and arbitration of grievances between parties whenever in their collective bargaining agreement(s) or by submission they have provided for mediation and/or arbitration through the Division of Labor Relations. 456 CMR 22.00 applies to the mediation and arbitration of grievances arising in the public sector pursuant to M.G.L. c. 150E, § 8, and in the private sector pursuant to M.G.L. c. 150.

22.02: Confidentiality

Public policy and the success of the Division's mission require that the Director and employees of the Division maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, § 10A, and M.G.L. c. 150E, § 9, a mediator, including an arbitrator acting in a mediatory capacity, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers, or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

22.03: Voluntary Grievance Mediation

At any time, an employee organization and employer may request mediation assistance for problems arising from the interpretation or application of terms of a collective bargaining agreement. This includes preventive mediation prior to the filing of a grievance and grievance mediation. A party making such a request must file a petition with the Division (MBCA Form F-2M). The original petition and one copy, signed and dated by the petitioning party(ies), should be sent to:

Division of Labor Relations
19 Staniford Street
Boston, MA 02114
FAX # (617) 626-6933

22.04: Appointment of Mediator

(1) Appointment. Upon receipt of the Grievance Mediation Petition, the Division will promptly ascertain whether the parties agree to grievance mediation. If the parties agree, the Division will appoint a staff mediator. Alternatively, should the parties request an outside mediator, the Division will assist them by providing a list from its panel of qualified individuals.

22.04: continued

(2) Fees. There will be no cost for a Division staff mediator. The cost of an outside mediator, however, will be equally divided between the parties, unless they agree otherwise.

22.05: Mediator's Function

The function of the mediator is to assist the parties in reaching a voluntary settlement of the dispute prior to grievance arbitration. A mediator may hold separate or joint conferences for this purpose. An agreement to mediate, however, will in no way alter a scheduled arbitration date unless both parties agree to postpone the arbitration. At no time shall a grievance mediator act as arbitrator of any case he or she has mediated, nor shall a grievance mediator discuss any aspect of the grievance mediation process with the appointed arbitrator.

22.06: Admissibility of Grievance Mediation in Arbitration

No discussions, offers of compromise, or proposed settlements generated during grievance mediation shall be admissible as evidence in an arbitration proceeding.

22.07: Initiation of Grievance Arbitration

(1) Petition for Arbitration. An employer or an employee organization, or both, may petition the Division to initiate grievance arbitration (MBCA Form F-2A) as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 456 CMR 22.03 through 22.06, at any time prior to the arbitration hearing, the parties may also jointly request the Division to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served by first-class mail, postage prepaid, on the principal representative of the other party in accordance with the provisions of 456 CMR 22.07(1). The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with 456 CMR 22.00. Failure to so state shall suspend the processing of the petition. The party or parties requesting grievance arbitration shall mail the original petition, signed and dated by the petitioning party(ies) and a copy of the pertinent collective bargaining agreement to:

Division of Labor Relations
19 Staniford Street
Boston, MA 02114
FAX # (617) 626-6933

Upon receipt, the Division will stamp the petition with the date of receipt.

If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition, and a copy of the pertinent collective bargaining agreement, to the Division in the manner set forth in 456 CMR 22.07(1).

(2) Fee for Grievance Arbitration. The fee for arbitration before the Division shall be \$100.00, of which \$50.00 shall be paid by the employee organization and \$50.00 shall be paid by the employer.

22.08: Appointment and Qualifications of the Arbitrator

(1) Appointment of a Single Neutral Arbitrator. The Director of the Division may appoint a single neutral arbitrator, who will hear and determine the case promptly.

(2) Appointment of a Tripartite Board. The Director of the Division may appoint a tripartite board to hear and determine grievance arbitration cases on a case-by-case basis. The Director of the Division shall be the neutral member of this board. One of the other members shall be a representative of labor and one a representative of employers of labor. Prior to appointing these representatives, the Director will consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, what representative they recommend.

22.08: continued

(3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Division any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify him or her as an impartial arbitrator. If the arbitrator is disqualified or withdraws, the Division will appoint another arbitrator in accordance with the provisions of 456 CMR 22.08(1) and (2).

22.09: Scheduling of Hearing by the Division

(1) Scheduling. Upon receipt of the petition, the Division will serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Division in either Boston or Springfield. The notice will be given reasonably in advance of the hearing. The Division will make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Division will generally accept such requests. If one party requests a continuance of the hearing, the Division may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at the discretion of the Director of the Division. Notice of a new hearing date and time will be given in accordance with the provisions of 456 CMR 22.09(1).

22.10: Issuance of Subpoenas

Any party may request the Division to issue a subpoena to compel the attendance of witnesses or the production of documents. (MBCA Form CA5) A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective. The party requesting the subpoena shall be responsible for service of the subpoena.

22.11: Hearing Before the Arbitrator

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice given in accordance with 456 CMR 22.09, fails to appear or to obtain a continuance. The Division shall investigate the circumstances surrounding a party's failure to be present, and, under extraordinary circumstances, may reopen the record, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 456 CMR 22.03 through 22.06.

(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and will have sole discretion in deciding any issues of procedure. The arbitrator will:

- (a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute;
- (b) Determine the order of presentation;
- (c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;
- (d) Administer oaths or affirmations;
- (e) Afford each party a full and fair opportunity to present relevant evidence and argument;
- (f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute; and,
- (g) Rule on the admissibility of evidence.

22.11: continued

(5) Transcript or Recording of Proceedings. A party wishing a stenographic record of the proceedings shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. The other party may purchase a copy from the stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript will be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for his or her own use.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the arbitrator, to an infraction of these rules will be deemed to have waived that objection.

(7) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, he or she shall declare the hearing closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral arguments or to submit written briefs. The time limits on submission of briefs will be established by the arbitrator after consultation with the parties. Should the parties wish to make oral argument, the arbitrator will determine the order of proceeding.

(8) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Division should be submitted to the Division in duplicate, together with a pre-addressed and postage paid envelope addressed to the representative or counsel of the opposing party. The Division will convey all briefs.

22.12: Arbitration Awards

The arbitrator shall issue an award within a reasonable period of time after the hearing has been closed and any briefs have been filed. The Division will simultaneously send by first class mail, postage prepaid, a copy of the award and any accompanying opinion to the counsel or representative of each party.

22.13: Clarification, Modification, or Correction of the Award

(1) Standards.

(a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.

(b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) Procedure.

(a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Division within a reasonable time after the requesting parties have received the award. The Division will promptly determine whether to grant the request. The Division may call a conference with the parties to consider the request. The Division will then promptly notify the parties in writing of the disposition of the request.

(b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award must be submitted to the Division within a reasonable time after the requesting party has received the award. Such a request must be served forthwith upon the opposing party's counsel or representative. The Division will give the opposing party an opportunity to respond or raise objections to the request. Any such response or objection must be received by the Division within a reasonable time after the opposing party has received a copy of the request. The Division shall then determine whether to proceed as set forth in 456 CMR 22.13(1).

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22.14: Publication of Award and Opinion

The award and opinion of the arbitrator will be treated as a public record and after issuance will be open to public inspection. The Division may have its awards and opinions published unless either party to the proceeding gives written notice to the Division within 30 days of the award that it does not wish to have such award and opinion published.

22.15: Request for Arbitration Before an *Ad Hoc* Arbitrator

The Division will designate an outside arbitrator if so specified in the collective bargaining agreement. If no procedure is specified, the Division will appoint an arbitrator from its list of qualified individuals. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with these rules. The compensation of an outside arbitrator will be in accordance with the requirements of 456 CMR 21.17.

REGULATORY AUTHORITY

456 CMR 22.00: M.G.L. c. 23, § 9T(c).

NON-TEXT PAGE

456 CMR: DIVISION OF LABOR RELATIONS

456 CMR 23.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

Section

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- 23.02: Petition to Initiate Grievance Arbitration Before the Division
- 23.03: Scheduling of Hearing by the Division; Continuances
- 23.04: Withdrawal of Petition
- 23.05: Hearing Before the Division
- 23.06: Arbitration Awards by the Division
- 23.07: Request for Arbitration Before *Ad Hoc* Arbitrator
- 23.08: Gender Days
- 23.90: Appendix

23.01: Scope

456 CMR 23.00 governs the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Division of Labor Relations (hereinafter the Division) as the arbitration tribunal. 456 CMR 23.00 applies to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E, § 8.

23.02: Petition to Initiate Grievance Arbitration Before the Division

(1) Who May File; When to File; Form; Where to File and Number of Copies; Service on Other Party.

- (a) Who. A petition to initiate grievance arbitration may be filed by an employer or by a labor organization or by both as the collective bargaining agreement or other agreement between the parties shall provide. In the absence of a controlling provision in the collective bargaining agreement, either party may bring such a petition.
- (b) When. Such a petition shall be filed in accordance with the time requirements of the collective bargaining agreement between the parties. In the absence of such provision in a collective bargaining agreement, such petition shall be filed within a reasonable period of time.
- (c) Form. The petition shall be prepared on a form furnished by the Division which appears as 456 CMR 23.90: *Appendix*.
- (d) Where; Copies. The original, signed by the petitioner(s) and one copy of said petition, shall be filed with the Board at its offices in the Hurley Building, 19 Staniford St., Boston, MA 02114.
- (e) Service. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of said petition to be served on the principal representative of the other party by registered or certified mail. The petitioning party, if proceeding unilaterally, shall state in the appropriate place on the petition that it caused a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of 456 CMR 23.02(1)(e). Failure to so state shall suspend the processing of the petition. Upon receipt, the Division shall stamp the petition with the appropriate date.

(2) Contents. The petition shall include the following:

- (a) The name, address and affiliation of the labor organization involved and the name, address, and telephone number of its principal representative.
- (b) The name and address of the employer involved and the name, address and telephone number of its principal representative.
- (c) The nature of the employer's business.
- (d) If the petition is being brought jointly and if the parties have agreed upon the issue(s), there shall be a brief statement as to the nature of the dispute and a statement as to the issues(s) jointly submitted; otherwise, the moving party shall give a brief statement as to the nature of the dispute and the remedy sought.

23.02: continued

- (e) If the petition is being brought unilaterally, a statement that a copy of the petition is being served in accordance with the procedures contained in 456 CMR 23.02(1)(e).
- (f) The party(ies) bringing such petition shall sign and date such petition and shall file with the petition a copy of the pertinent collective bargaining agreement.

23.03: Scheduling of Hearing by the Division; Continuances

- (1) Scheduling. Upon receipt of the petition, the Division shall serve upon each of the parties a written notice of hearing to be held at the offices of the Division at a time and date fixed. Such notice shall be given reasonably in advance of such hearing. In cases where the petition has been brought unilaterally, the Division may give notice of hearing by certified mail, return receipt requested.
- (2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Division shall continue the hearing to such time and date. If one party requests a continuance of the hearing, the Division may for good cause shown and after consultation with the other party, where possible, continue the hearing to another time and date. Notice of a new hearing date and time shall be given in accordance with the provisions of Division. Every effort shall be made by the Division to hold such hearing seasonably after receipt of the petition.

23.04: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

23.05: Hearing Before the Division

- (1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of any party who, after notice given in accordance with 456 CMR 23.03, fails to be present or fails to obtain an adjournment. The Arbitrator may choose not to base his/her award solely upon the presentation of one party; rather, he/she may afford the defaulting party 14 days from the date of the hearing to submit evidence and argument in writing to the Arbitrator with a copy to the other party. If the defaulting party makes no such offer of proof within the time aforesaid, the Arbitrator shall decide the case on the evidence and argument before them. If the defaulting party chooses to make such offer of proof, the Arbitrator shall afford the other party an appropriate opportunity to make a seasonable response.
- (2) Counsel or Representative of the Parties. At or before the first hearing conducted by the Arbitrator, each party to the dispute shall furnish the Arbitrator with a written appearance identifying that party's counsel or representative. Such person or his designee shall have the exclusive authority to present that party's case to the Arbitrator, and the Arbitrator shall deal with such person as the exclusive spokesman and representative for that party throughout the arbitration proceeding or until it receives notice that some other person shall serve as counsel or representative for a party.
- (3) Order of Proceedings. The Arbitrator shall open the hearing with a reading of the pertinent portions of the petition to initiate grievance arbitration. The petitioning party will ordinarily present its case first, but the Arbitrator may vary this procedure. In the case of a petition brought jointly, the Arbitrator shall determine the order of proceeding.
- (4) Record of Proceedings. If one or both parties desire that a stenographic record of the proceedings be made, that party or both parties, as the case may be, shall contact the Division seven days in advance of the hearing to ask that the Division provide such a service. If the Division provides such a service, transcripts will be provided upon request at an appropriate cost to the requesting party(ies). The Division may on its own motion make a stenographic record of the proceedings.

23.05: continued

- (5) Evidence. Each party shall be afforded full and equal opportunity for the presentation of relevant proofs. The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator shall rule on the admissibility of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the counsel or representative of both parties except where one of the parties is in default or has waived its right to be present.
- (6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the Board, to infraction of these rules shall be deemed to have waived such objection.
- (7) Closing of Hearings. The Arbitrator shall inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, she shall declare the hearings closed, and he/she shall record the date and time thereof. Upon the close of the hearings each party shall have the right to make an oral argument and/or file a brief with the Board. The time limits on submission of briefs shall be established by the Arbitrator after consultation with the parties. Should the parties wish to make oral argument, the Arbitrator shall determine the order of proceeding.

23.06: Arbitration Awards by the Division

- (1) Arbitration Award. After the close of the hearing and the submission of briefs, if any, the Arbitrator shall render an award on a form prepared by it.
- (2) Time of Award. The Arbitrator shall make every effort to render the award within 30 days of the close of the hearings.
- (3) Opinion. The Arbitrator shall make every effort to render an opinion to accompany the award. The opinion shall provide a statement of the rationale by which the result was reached.
- (4) Service of Award. The Division shall simultaneously send by mail a copy of its award and accompanying opinion to the principal representative of each party as such name appears on the petition to initiate grievance arbitration or on the appearance form at the time of hearing.
- (5) Clarification of Award.
 - (a) Request for Clarification. Each party or both parties may request the Arbitrator to clarify any aspect of her award provided such request is made within a reasonable time of the date of the Arbitrator's award.
 - (b) Procedure in Cases of Joint Request. In cases where the Arbitrator receives a joint request from the parties to clarify her award, she shall promptly determine whether any clarification is warranted and shall determine the nature of the clarification, if any, and shall notify the parties in writing of the disposition of the request for clarification. If the circumstances so warrant, the Arbitrator may call a conference with the parties to consider the matter of clarification.
 - (c) Procedure in Cases of Unilateral Request. In cases where the Arbitrator receives a unilateral request from a party to clarify his/her award, he/she shall have the discretion to decide whether to proceed with such request. If he/she decides to proceed, he/she shall promptly determine whether the other party has any objection to the request, and if the circumstances so warrant, he/she may call a conference with the parties to consider the matter of objections and clarification thereafter, the Arbitrator shall decide upon the question of clarification and shall promptly notify the parties in writing of the disposition of these issues.
- (6) Publication of Award and Opinion. The awards and opinions of the Division shall be treated as public records and after issuance shall be open to public inspection by any person. The Division may have its awards and opinions published by any of the publishing services unless either party to the proceeding gives written notice to the Division within ten days from the date of the award that it does not wish to have such award and opinion published.

456 CMR: DIVISION OF LABOR RELATIONS

23.07: Request for Arbitration Before *Ad Hoc* Arbitrator

In the case of those collective bargaining agreements where the Division is named as the tribunal administering grievance arbitration before *ad hoc* arbitrators, the Division shall follow the procedure specified in the collective bargaining agreement in the designation of an outside arbitrator. If no procedure is specified in such agreement, the Division shall appoint an arbitrator from the list of qualified persons that it maintains. The arbitrator so designated shall observe in the conduct of the arbitration proceedings and in the rendering of his award the procedures applicable to the Division's handling of such matters as previously spelled out in 456 CMR 23.00. The compensation of an outside arbitrator shall be in accordance with the requirements set forth in 456 CMR 21.17 of the Division's Fact-finding Rules.

23.08: Gender; Days

- (1) Gender. The masculine gender shall be deemed to denote the feminine or neutral gender, the singular to denote the plural and vice-versa where the context so permits.
- (2) Days. References to days shall mean calendar days, and time calculations shall commence with the day following notice.

REGULATORY AUTHORITY

456 CMR 23.00: M.G.L. c. 23, § 9T(c).